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Supreme Court of the United States

OCTOBER TERM, 1944.

No. 315.

W. C. LAYCOCK ET AL., PETITIONERS,

VS.

HIDALGO COUNTY WATER CONTROL & IMPROVEMENT DISTRICT No. 12 ET AL., RESPONDENTS.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

W. C. Laycock,
J. D. Norwood,
W. C. Laycock,
In His Capacity As Agent for the Sole Benefit of W. C. Laycock and J. D. Norwood,

By W. R. MONTGOMERY,
Counsel for Petitioners.

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W. C. LAYCOCK ET AL., PETITIONERS,

VS.

HIDALGO COUNTY WATER CONTROL & IMPROVEMENT DISTRICT No. 12 ET AL., RESPONDENTS.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

To the Honorable, the Supreme Court of the United States:

The petition of W. C. Laycock, J. D. Norwood and W. C. Laycock in his capacity as agent for the sole benefit of W. C. Laycock and J. D. Norwood, for a Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit, respectfully shows to this Honorable Court:

I.

SUMMARY STATEMENT OF THE CASE.

On November 20, 1935, W. L. Shumate, Jr., brought suit in the United States District Court for the Southern District of Texas, Brownsville Division, seeking judgment upon certain coupons attached to Interim Bonds issued by the Respondent, Hidalgo County Water Control and Improvement District No. 12 (R. 148-155). Said Respondent District is organized and exists under and by virtue of Article XVI, Section 59, Constitution of Texas, and Article 7880, Sections 1, *et seq.*, Revised Civil Statutes of Texas, set forth in the Appendix to the supporting Brief attached hereto, pages 43 to 133. Said suit bore the number 891 D. L., and was styled *W. L. Shumate, Jr.*, v. *Hidalgo County Water Control and Improvement District No. 12* (R. 148).

After proper service of process (R. 147-148), and answer filed (R. 157-158), the cause was submitted to a jury on instructions, and on December 6, 1935, judgment was rendered in favor of W. L. Shumate, Jr., against the Respondent District for the sum of $48,450 principal, together with the further sum of $6,397.60 interest, with interest on the total sum at the rate of six per cent per annum (R. 37-38, 158). Although formal answer was filed for the Respondent District, no contest was made upon the trial (R. 38). Said judgment was not appealed from, became final, has never been satisfied (R. 163), nor set aside (R. 138, 141-142). On January 6, 1936, W. L. Shumate, Jr., assigned said judgment to Petitioners, the present legal and equitable owners thereof (R. 160-161).

Being unable to collect their judgment by process (R. 158-160), Petitioners instituted this present suit on November 9, 1937, seeking to enforce the final judgment (R.

18-38). This suit being ancillary to the previous suit, No. 891 D. L., and based upon the final judgment in said previous suit, had for its purpose the enforcement of said judgment by writ of mandamus compelling the officers and directors of the Respondent District to take the steps provided by the laws of the State of Texas to pay said judgment. This remedy was sought both specifically (R. 36) and generally (R. 88-89).

Long after the judgment sought to be enforced had become final, the State of Texas, through its Attorney General, instituted suit in the 93rd District Court of Hidalgo County, Texas, the situs of the Respondent District, seeking, among other things, to have said Respondent District declared non-existent and to have all its outstanding bonded indebtedness invalidated (R. 293-232). That suit reached the Supreme Court of Texas on appeal from a temporary injunction. *State* v. *Miller*, 133 Tex. 498, 128 S. W. 2d 1134. The decision in that Court, rendered on June 7, 1939, held that the Interim Bonds issued by the Respondent District were invalid solely because they had been issued in an amount slightly in excess of the constitutional limits fixed by the vote of the property owners which authorized their issuance. The Supreme Court of Texas held that the Respondent District had full power to issue Interim Bonds, and that Interim Bonds, when properly issued, were legal and valid obligations, but that the Respondent District was limited as to the amount of such Interim Bonds which it could lawfully issue, to the amount provided by statute authorizing such issuance which was in existence at the time the vote authorizing the issuance of Construction Bonds was had. It held that because at the time the voters authorized the issuance of Construction Bonds, a statute was in effect which permitted the issuance of Interim Bonds in an amount equal to ten per cent of the

Construction Bonds so voted, that this was the limit of the authority of the District to issue such Interim Bonds. The Supreme Court of Texas held that the issuance of Interim Bonds did not create any additional debt, but was merely a charge against the Construction Bonds and was to be paid out of the revenues provided by law for the servicing of the Construction Bonds. It further held that because, after the vote on the Construction Bonds was had, the Legislature amended the Interim Bond statute so as to permit the issuance of Interim Bonds in an amount of twenty-five per cent instead of ten per cent of the Construction Bonds, and since the Respondent District attempted to issue Interim Bonds in excess of ten per cent of the Construction Bonds, to that extent the constitutional limitations had been exceeded.

Based upon this holding, the state trial court, on final hearing, declared all of said Interim Bonds invalid, and enjoined all parties from dealing in them further. Said judgment, rendered on January 30, 1940 (R. 340), expressly denied the State's prayer for the dissolution of the Respondent District (R. 338), and expressly eliminated from the decree any adjudication of the rights of Petitioners under the judgment of the court below in Cause No. 891 D. L. which was, as stated, based upon coupons attached to Interim Bonds of said District (R. 338-339).

That judgment was affirmed by the Court of Civil Appeals for the Tenth Supreme Judicial District of Texas on October 30, 1941, and writ of error was subsequently refused by the Supreme Court of Texas. *Miller* v. *State ex rel. Abney*, (Tex. Civ. App.) 155 S. W. 2d 1012.

On February 5, 1942, the State of Texas, acting through its Attorney General, asked leave to intervene in the case at bar (R. 118-128), and, over Petitioners' opposition (R. 129-130), such leave was granted on April 8, 1942 (R. 130-131).

This suit came on for trial before the Honorable T. M. Kennerly, District Judge at Brownsville, on May 25, 1942 (R. 141). The Respondents, both the District and the Intervenor State of Texas, attacked the judgment in Cause No. 891 D. L., on the ground that it had been obtained by fraud on the jurisdiction of the trial court (R. 39-41). This attack was unsuccessful, and the trial court held the original judgment valid (R. 138), refused to set same aside, and denied the relief sought in this respect (R. 142). Respondents did not cross-appeal from this adverse ruling of the trial court.

However, because the courts of Texas, long after the said judgment had become final, had held that the Interim Bonds which were the basis of such judgment were invalid because they were issued in an amount in excess of the constitutional limitations, the trial court not only denied Petitioners any relief for the enforcement of said judgment, but went farther and enjoined them from ever asserting any rights under such judgment or transferring same to other persons (R. 142).

On appeal, the judgment was affirmed *in toto* (R. 563). The opinion is reported in 132 F. 2d 784 (R. 557). The majority opinion by Judge Hutcheson (R. 557), based its decision on the proposition that while mandamus is a legal remedy, its application is based upon equitable principles, and therefore, under the doctrine as announced in the case of *Brownsville* v. *Loague*, 129 U. S. 493, the trial court properly refused Petitioners any relief and properly enjoined them from asserting any rights under or transferring the judgment. The majority opinion expressly declined to pass upon the issue as to whether or not the presence of the State of Texas in the suit justified the trial court's action.

The concurring opinion by Judge Sibley (R. 562), agreed with Petitioners' contentions to the effect that

the doctrine of *Brownville* v. *Loague* does not apply to this case, and that as between Petitioners and the Respondent District, the trial court would have been unjustified in refusing to enforce its own valid, final judgment. But, because the State of Texas is a party to this suit, Judge Sibley is of the opinion that the judgment of the trial court was right both in refusing the remedy sought and in enjoining Petitioners from ever asserting any rights under or transferring such judgment. In other words, absent the intervention of the State of Texas, the trial court could neither refuse to enforce its previous judgment nor enjoin Petitioners from claiming under it, but, present the State of Texas, the previous valid, final judgment of the trial court was properly emasculated. The majority and the concurring opinions are thus demonstrated to be irreconcilable.

II.

JURISDICTION.

The judgment of the Circuit Court of Appeals is dated May 19, 1944 (R. 563). Petition for writ of certiorari was filed in this Court within three months from the date of such judgment. Jurisdiction of this Court is thereby timely invoked under Section 240 (a) of the Judicial Code, as amended (Sec. 347 (a), Title 28, U. S. C. A.), and Rule 38 (5b) of this Court, and Sec. 350, Title 28, U. S. C. A.

III.

QUESTIONS PRESENTED.

(1) Did the courts below have the power to enjoin Petitioners from claiming any rights under, or transferring to other persons a valid, final judgment of the United

States District Court which has successfully weathered a direct attack and was found to be jurisdictionally valid?

(2) Did the courts below properly deny to Petitioners any remedy for the enforcement of a final judgment at law of the United States District Court, jurisdictionally valid and free from fraud, and did they correctly hold that where enforcement of such judgment is sought, the trial court may look through the judgment in search of errors in its rendition?

(3) Did the majority opinion of the Circuit Court of Appeals correctly hold that the doctrine of *Brownsville* v. *Loague*, 129 U. S. 493, is applicable to a valid, final judgment at law based upon coupons attached to bonds of a water district whose only invalidity lies in the fact that they were issued in an amount slightly in excess of the constitutional limitations?

(4) Did the Circuit Court of Appeals correctly hold that the question of the coupons' validity was not *res judicata* by virtue of the judgment rendered on them by the United States District Court in cause No. 891 D. L.?

(5) Did the concurring opinion of the Circuit Court of Appeals correctly hold that the State of Texas in its sovereign capacity may come into the Federal courts and attack valid, final judgments against water districts which it has given the power of suing and being sued?

IV.

REASONS FOR GRANTING THE WRIT.

(1) In holding that the rule announced in *Brownsville* v. *Loague*, 129 U. S. 493, empowers a United States District Court *not only* to refuse to grant a judgment cred-

itor any remedy for the enforcement of his judgment, *but also* to enjoin such judgment creditor from claiming any rights whatsoever thereunder or from selling or transferring such judgment to any other persons, the Circuit Court of Appeals has sanctioned such a departure by a lower court from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision.

If the holding of the majority opinion of the Circuit Court of Appeals to the effect that the doctrine of *Brownsville* v. *Loague* applies to the case at bar is correct, such holding would only justify a denial to Petitioners of the remedy of mandamus. It would not and could not justify the complete emasculation of such judgment in the absence of a successful direct attack thereon. The judgment being final and jurisdictionally valid is a vested property right of Petitioners and cannot be affirmatively taken from them by judicial fiat without due process of law.

(2) In holding that the trial court may look through its own valid, final judgment at law when importuned to enforce same, and that it may deny its enforcement because of an error in its rendition, the Circuit Court of Appeals has decided a federal question in a way probably in conflict with applicable decisions of this Court. Some of these applicable decisions are: *Cromwell* v. *County of Sac*, 94 U. S. 351; *Ralls County Court* v. *United States*, 105 U. S. 733; *United States ex rel. Ranger* v. *City of New Orleans*, 98 U. S. 381; *Santa Fe County* v. *New Mexico*, 215 U. S. 296; *Memphis* v. *Brown*, 97 U. S. 300; *United States* v. *Ft. Scott*, 99 U. S. 152; *Riggs* v. *Johnson County*, 6 Wall. 166; *Board of Commissioners of Knox County* v. *Aspinwell*, 24 How. 376; *State of Arkansas ex rel. Utley* v. *St. L. & S. F. R. Co.*, 269 U. S. 172; *Louisiana ex rel.*

Southern Bank v. *Pilsbury*, 105 U. S. 278; *United States ex rel. Harshman* v. *Knox County Court*, 122 U. S. 306; *United States ex rel. Wolfe* v. *Mayor, etc., of New Orleans*, 103 U. S. 358.

(3) The holding of the Circuit Court of Appeals to the effect that the trial court properly looked through its own valid, final judgment at law and properly denied its enforcement, conflicts with decisions of other Circuit Courts of Appeals which have held to the contrary. Some of said conflicting decisions are: *Woods Bros. Const. Co.* v. *Yankton County, S. D.*, (8th Cir.) 54 F. 2d 304; *City of Mohall* v. *First Nat. Bank of Sleepy Eye*, (8th Cir.) 105 F. 2d 315; *City of Wheeling* v. *John F. Casey Co.*, (4th Cir.) 85 F. 2d 922, 89 F. 2d 308.

(4) In holding that the judgment sought to be enforced is not *res judicata* of the issue of the validity of the coupons sued on, irrespective of later holdings by other courts that they were invalid, the Circuit Court of Appeals has decided an important question of local law in a way probably in conflict with applicable local decisions.

Some of such decisions are *Commonwealth of Massachusetts* v. *Davis*, (Tex. S. Ct.) 168 S. W. 2d 216, 220, citing *Chicot County Drainage Dist.* v. *Baxter State Bank*, 308 U. S. 371; *Security Trust Co. of Austin* v. *Lipscomb County*, (Tex. S. Ct.) 180 S. W. 2d 151; *Landa* v. *Isern*, (Tex. S. Ct.) 174 S. W. 2d 310; *Harkness* v. *Hutcherson*, 90 Tex. 383, 38 S. W. 1120.

(5) The holding of the Circuit Court of Appeals to the effect that the rule announced in *Brownsville* v. *Loague*, 129 U. S. 493, applies to judgments on bonds or coupons issued in excess of constitutional limitations, conflicts with numerous decisions of other Circuit Courts of Appeals which hold that judgments based on bonds issued

as a result of a defective exercise of the power to issue them, as distinguished from a total absence of such power, may not be refused enforcement under the holding in *Brownsville* v. *Loague*. Some of these conflicting decisions are: *Estill County* v. *Embry*, (6th Cir.) 144 Fed. 913; *Board of Commissioners* v. *Platt*, (8th Cir.) 79 Fed. 567; *Geer* v. *Board of Commissioners of Ouray County*, (8th Cir.) 97 Fed. 435; *Mayor, etc., of the City of Helena* v. *United States ex rel. Helena Waterworks Co.*, (9th Cir.) 104 Fed. 113; *Cushman* v. *Warren-Scharf Asphalt Paving Co.*, (7th Cir.) 220 Fed. 857.

(6) The holding in the concurring opinion to the effect that a State in its sovereign capacity may collaterally attack final judgments of the Federal Courts rendered against water districts which the State has given the power to sue and be sued without its joinder, thereby rendering all such judgments subject to attack at any time at the whim of the State Attorney General, raises an important question of federal law which has not been, but should be, settled by this Court.

Adherence to this doctrine would destroy the rule of *res judicata* in the federal courts in so far as judgments against political subdivisions and semi-independent branches of the state government are concerned. The plea of limitations not being available against a sovereign State, there can be no final judgment against one of its branches or subdivisions which otherwise have the independent power to contract, sue and be sued, if this holding is approved. The control of the federal courts over their own judgments, final, subsisting and jurisdictionally valid, is a most important federal question and one that should be definitely settled by this Court.

PRAYER FOR WRIT.

Wherefore, Petitioners respectfully pray that a writ of certiorari issue under the seal of this Court directed to the Circuit Court of Appeals for the Fifth Circuit at New Orleans commanding said Court to certify and send to this Court on a day certain to be named therein, a full and complete transcript of the record and the proceedings had in said Court in the case numbered and entitled on its docket No. 10614, *W. C. Laycock et al., Appellants*, v. *Hidalgo County Water Control and Improvement District No. 12 et al., Appellees*, to the end that this cause may be reviewed and determined by this Court as provided by the statutes of the United States, and that the judgments of the Circuit Court of Appeals and of the District Court be reversed by this Court and judgment rendered for Petitioners granting the writ of mandamus as prayed for and dissolving the injunction rendered against these Petitioners by the District Court.

In the alternative, Petitioners pray that the injunction be dissolved and the cause remanded to the District Court for further proceedings looking to the enforcement of the judgment in Cause No. 891 D. L., styled *W. L. Shumate, Jr.*, v. *Hidalgo County Water Control and Improvement District No. 12*, and for such other relief as to this Honorable Court may seem right and proper.

Dated this 27th day of July, A. D. 1944.

W. C. Laycock,
J. D. Norwood,
W. C. Laycock,
In His Capacity As Agent for the Sole Benefit of W. C. Laycock and J. D. Norwood,

By W. R. MONTGOMERY,
Counsel for Petitioners.

By: W. R. Montgomery
Of Counsel.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

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VS.

HIDALGO COUNTY WATER CONTROL & IMPROVEMENT DISTRICT No. 12 ET AL., RESPONDENTS.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

To the Honorable, the Supreme Court of the United States:

I.

OPINIONS OF THE COURTS BELOW.

The opinions, majority and concurring, of the United States Circuit Court of Appeals for the Fifth Circuit (R. 557-562), are reported in 142 F. 2d 789. The judge before whom this cause was tried in the United States District Court for the Southern District of Texas, wrote no formal opinion, but filed findings of fact and conclusions

of law (R. 135-140). Among these findings of fact is the following:

> "(d) All the facts existed necessary to give this Court jurisdiction in cause No. 891, the parties were properly before the Court, and the trial was properly had, *and I find the Judgment to be valid.* I find, however, that this Court in that case did not have before it the facts which are now before the Court and which were before the State Court and which were the basis of the holding of the State Court" (Italics ours).

II.

JURISDICTION.

A statement of the grounds on which the jurisdiction of this Honorable Court is invoked is set forth in the preceding Petition under heading II (p. 6) and are hereby adopted and made a part of this brief.

III.

STATEMENT OF THE CASE.

A statement of the case has been made in the preceding Petition under heading I (pp. 2-6) and is hereby adopted and made a part of this brief.

In view of the statement in the concurring opinion (R. 562), to the effect that:

> "The plaintiff in judgment was no *bona fide* holder, *but a party to a fraud* by which the bonds were gotten from the district" (Italics ours);

Petitioners desire to call the Court's attention to the following record facts, supplementary to the statement of the case in the Petition, *supra.*

Respondents claimed in the State court, and they claim in this suit, that the Interim Bonds were fraudulently exchanged for a water permit, and that these Petitioners learned about this exchange some years later before they purchased the bonds and coupons sued on. However, as will be pointed out, this exchange was expressly condoned by the Respondent District through its present Board of Directors, and a judgment of a State court was entered and spread on the minutes of the District which purported not only to validate the bonds but to approve a settlement between the District and the party who they say perpetrated the fraud. After having settled wih the so-called "thief" (R. 394-395), and after having permitted him to peddle his bonds for approximately five years, during which time the Respondent District held said bonds out to the public as valid obligations by recitations in its official minutes, it now contends that these Petitioners are parties to the fraud which took place years before they ever heard of the bonds.

The facts leading up to the entry of the judgment in Cause No. 891 D. L., *W. L. Shumate, Jr.*, v. *Hidalgo County Water Control and Improvement District No. 12*, which petitioners are here seeking to enforce, are as follows:

> On November 17, 1930, a suit, called the Montalvo suit, was instituted in the District Court of Hidalgo County asserting that the interim bonds of the defendant water district had been fraudulently exchanged for a water permit, and seeking to enjoin their transfer by the then holders (R. 499, 90-102).
>
> The entire transaction about which Respondents now complain was exposed in clear and unmistakable language in the petition in that case. In fact one of the appellees, now a member of the board of directors of the District, L. A. Gannaway, was a plaintiff in that case and swore to that petition (R. 102).

Thereafter the original board of directors (who the appellees claim committed the fraud) resigned and the present board, including L. A. Gannaway one of the plaintiffs in the Montalvo suit, took their places (R. 506).

Subsequently, the newly elected directors (the present board) filed a pleading in that suit (R. 112-113), and thereby took charge of the case (R. 503-504).

They discharged the plaintiffs' attorneys (R. 503-504) and employed the law firm of West and Hightower of Brownsville, Texas, to investigate the transactions referred to in the Montalvo petition. These attorneys, together with another attorney, D. W. Glasscock of Mercedes, Texas, gave them an opinion to the effect not only that the bonds were valid, but that the exchange of the bonds for the water permit could not be successfully attacked, and that their investigation did not disclose any actual fraud in the transfer (R. 396-404).

This opinion was ordered spread upon the minutes of the District on March 1, 1932 (R. 392-395).

Judgment was then entered by the District Court of Hidalgo County holding the bonds valid and expressly decreeing that their exchange for the water permit was lawful (R. 505, 114-117).

This judgment was likewise spread upon the minutes of the District by resolution of the board of directors passed March 29, 1932 (R. 515, 507).

From that day until the present time, the attorneys' opinion and the copy of that judgment have remained upon the minutes of the District, unless they have been removed since this case was tried.

From the foregoing, it is apparent that had not the judgment in the Montalvo case been entered, Petitioners would never have been led into the purchase of these bonds. But with that judgment not only a matter of

record in the court house, but spread upon the District's Minutes as well, there was no fraud resulting from Petitioners' purchase of these bonds. All the wrongs about which Respondents now complain had been condoned and approved by them, and the public so advised by their official minutes.

The bonds had been approved by the Attorney General of Texas (R. 238-240), a prominent bond attorney, J. T. Sluder, had rendered an opinion on their validity (R. 522), and other bond attorneys had rendered similar opinions, but same do not appear in this record, as they appeared in the record in the companion case of *Holderman* v. *Hidalgo County Water Control Improvement District No. 12*, (5th Cir.) 142 F. 2d 792.

Some three or four years after these attorneys' opinions had been written, and after the opinion of D. W. Glasscock and West and Hightower had been spread upon the minutes of the District, and about the same length of time after the judgment in the Montalvo suit had been spread upon these minutes, the Petitioners first began their negotiations for the purchase of these bonds and coupons (R. 429). Up to that time neither of the Petitioners had ever heard of these bonds. They made inquiries concerning their validity. Based upon justifiable reliance on the recitations of the judgment in the Montalvo case, which the Directors of the Respondent District held out to the world on their official minutes, and on the advice of their attorney (R. 419), Petitioners purchased the bonds from which the coupons placed in evidence were taken. It appears that they saw opinions written by numerous attorneys attesting to the validity of the bonds. They saw the opinion of the attorneys for the District spread on the minutes of the District, and they also saw a judgment of a court of competent jurisdiction spread on those minutes, reciting that the bonds

were valid and that the exchange for the water permit was in all things regular. Of course, neither the opinions nor the judgment, as will be pointed out hereafter, made the bonds valid if they were issued in excess of the constitutional limitations, but certainly that judgment validated any irregularity in the transfer of the bonds, and a bond buyer was entitled to rely upon the recitations therein.

The foregoing supplemental statement presents the true picture from the Petitioners point of view and clarifies the statement made in the concurring opinion, which otherwise might be misconstrued. The Petitioners herein were not actual parties to any fraud. If a fraud was committed, it was by other persons to them unknown and they could be parties to it only constructively, if at all.

IV.

SPECIFICATIONS OF ERROR.

1. The Circuit Court of Appeals erred in holding that the trial court properly enjoined Petitioners from henceforth claiming any rights under the judgment in Cause No. 891 D. L., and from transferring same to other persons, after holding such judgment to be valid.

2. The Circuit Court of Appeals erred in holding that the trial court properly refused to enforce its own valid, final judgment in a law action, when properly requested to enforce the same.

3. The Circuit Court of Appeals erred in holding that the trial court properly refused Petitioners any relief for the enforcement of the final judgment in a law action on the ground that a mandamus is a discretionary writ and may be withheld on equitable principles.

4. The Circuit Court of Appeals erred in holding that the trial court properly refused Petitioners any relief for the enforcement of their valid, final judgment in a law action on authority of *Brownsville* v. *Loague*, 129 U. S. 493.

V.

ARGUMENT.

Summary of Argument.

POINT 1. Assuming that the courts below were correct in denying Petitioners any remedy to enforce their judgment, they had no right to go farther and take such judgment from petitioners by injunctive order in the absence of a successful direct attack upon such judgment. The most that they could do would be to leave the parties as they found them.

POINT 2. The trial court having upheld the validity of its former judgment in a law action, could not refuse to enforce it through the expedient of looking back through the judgment in search for errors in its rendition, which errors should have been, but were not, presented when the original cause was tried.

POINT 3. Mandamus against public corporations being the only remedy available to judgment creditors, since execution, as such, is not effective, is treated as being a writ in the nature of an execution for the purpose of collecting such judgments. It is, therefore, distinguishable from original proceedings for mandamus against public officials, and from mandatory writs to enforce equitable judgments. The so-called mandamus to collect judgments in law actions does not give the courts jurisdiction to re-try and re-adjudge the cases in which judgments were had, to enforce which mandamus is sought.

POINT 4. The case of *Brownsville* v. *Loague*, 129 U. S. 493, dealt with a situation where there was a total absence of power to issue bonds for the proposed purpose. It did not deal with a situation such as is presented in the case at bar where the issuing body possessed the power to

issue the bonds but defectively exercised such power by issuing them for an amount in excess of that authorized by the vote of the people. Subsequent decisions have uniformly construed *Brownsville* v. *Loague* as applying only where there is a total absence of power to issue any such bonds and as not applying where there is merely a defective exercise of such power.

POINT 1.

No authority to take from petitioners all rights in a valid final judgment at law in absence of successful direct attack, even though remedy for enforcement may be denied.

As pointed out in the Statement of the Case, *supra*, Respondents made a direct attack upon the judgment in Cause No. 891 D. L. here sought to be enforced (R. 39-64). This attack was unsuccessful, and the trial court held the judgment valid (R. 138). No cross appeal was taken, and under authority of *Morley Construction Co.* v. *Maryland Casualty Co.*, 300 U. S. 185, that issue is *res judicata*.

Absent this direct attack and consequent relief, Respondents have no right to injunction against Petitioners, or otherwise to set aside the judgment. *Stoll* v. *Gottlieb*, 305 U. S. 165; *Dowell* v. *Applegate*, 152 U. S. 327; *Des Moines Nav. & R. Co.* v. *Iowa Homestead Co.*, 123 U. S. 552.

We have here, therefore the anomalous situation of the trial court holding a judgment to be valid and refusing to set it aside in the face of a direct attack, and in the same breath enjoining the owners thereof from asserting any further claims under it and from transferring, selling and assigning same, or any part thereof (R. 142). This, we respectfully submit, violates the fundamental rule of *res judicata*.

It seems clear, therefore, that the holding of the majority of the Circuit Court of Appeals can in no event be upheld in so far as the injunction against Petitioners is concerned. Granting, for the sake of argument here, that the majority properly affirmed that part of the judgment denying Petitioners any relief, its action in affirming that part of the judgment granting the Respondents injunctive relief can be justified upon no proposition asserted by it.

The minority, recognizing the unsoundness of the position taken by the majority, placed its concurrence on a ground upon which the majority expressly refused to pass. Judge Sibley, disagreeing with the majority opinion on fundamentals, says that "all enforcement of the judgment ought not to have been enjoined by the decree appealed from, at the instance of the judgment debtor" (R. 562). But, because the State of Texas is a party to this suit, he reached the conclusion that the trial court's judgment was right. Granting the premise upon which Judge Sibley bases his concurrence, his opinion can be justified. The majority opinion cannot be. Either the injunction was properly granted at the request of the State, or it was not properly granted at all.

We think, therefore, that if the holding of the Circuit Court of Appeals is to be sustained, it must be upheld upon the conclusion reached in the minority opinion.

This raises a question of far reaching import. Can a State, in its sovereign capacity, come into a federal court and attack a final judgment of that court rendered against one of its public corporations which such State has by statute vested with the power to sue and be sued in the courts?

By the provisions of Article 7880-51, Revised Civil Statutes of Texas (App. 74), the Respondent District

is given the power to sue and be sued. For convenience, we quote this statute here:

> "Art. 7880-51. Right to sue and be sued.
>
> All districts can sue and be sued in any and all courts of this State in the name of the district. All courts shall take judicial knowledge and notice of the establishment of a district and the boundaries thereof. Such districts shall contract and be contracted with in the name of the district. (Acts 1925, 39th Leg., ch. 25, p. 98, Sec. 51.)"

Having given these water districts the power to sue and be sued and to contract and be contracted with, the State has clothed them with semi-independence and is precluded from throwing about them its cloak of sovereignty. *Kiefer & Kiefer* v. *Reconstruction Finance Corporation*, 306 U. S. 381.

Creditors, seeking to enforce in the courts their contracts with water districts, may not join the State, as such, as a party defendant. They reach it through its agent, the district, as to which it has waived its immunity. *Bank of United States* v. *Planters Bank*, 9 Wheat. 904.

If a final judgment against such an agency of the State which possesses the power to sue and be sued be not binding on the State, a creditor of such agency would be unable to obtain a final judgment against its debtor in any court. If a State be permitted to come into court after such a judgment has become final and attack it by virtue of its sovereignty, the doctrine of *res judicata* is meaningless. The far reaching effects of such a decision cannot be magnified.

A valid, final judgment was obtained against the Respondent District in so far as that suit is concerned. A judgment so obtained was binding, not only on the Dis-

trict as such, but on the State as well. By virtue of having clothed the District with power to sue and be sued, the State consented to be bound by any judgment rendered against its creature. There is privity between officers of the same government so that a judgment in a suit between a party and a representative of the State is *res judicata* in relitigation of the same issue between that party and another officer of the same government. *Tait* v. *Western Maryland R. Co.*, 289 U. S. 620; *Sunshine Anthracite Coal Co.* v. *Adkins*, 310 U. S. 381, 402.

By virtue of the provisions of Article 7880-25a (App. 59-60), the State of Texas reserved to itself the right to contest the validity of bonds of its water districts before they have been reduced to judgment. *State ex rel. Abney* v. *Miller*, 133 Tex. 498, 128 S. W. 2d 1134, 1135. But such reservation of power cannot be construed to permit the State to contest the validity of such bonds after they have been reduced to judgment and after such judgment has become final.

The fact that the State court permitted the judgment in the Montalvo suit to be set aside in *Miller* v. *State*, (Tex. Civ. App.) 155 S. W. 2d 1012, does not establish the rule announced in the minority opinion. As pointed out in the majority opinion, the answer to that contention lies in the fact that the Montalvo judgment was not, as is the judgment in No. 891 D. L., a money judgment in favor of a private suitor, but was merely a general declaratory judgment that the bonds were valid, entered in a suit in which no bondholder was seeking a money judgment on his bonds. At that time there was no general declaratory judgment statute in Texas. That suit did not purport to be brought under the bond validating statute.

We respectfully submit, therefore, that even if the State of Texas has the power to reserve to itself the right

to attack valid, final judgments of the federal courts rendered against its water districts, which we cannot believe it does have, it has nevertheless not attempted to do so, and the holding in *Miller* v. *State*, *supra*, has no bearing on the right of the State to disregard the judgment of the trial court in No. 891 D. L.

POINT 2.

A valid judgment of a court of competent jurisdiction may not be refused enforcement unless and until properly set aside.

As the owners of a valid, final judgment of a court of competent jurisdiction, Petitioners are entitled to invoke the powers of that court to enforce it. The judgment is *res judicata*, not only of the validity of the coupons sued on, but of the remedy provided by law for its enforcement. *Ralls County Court* v. *United States*, 105 U. S. 733; *United States ex rel. Ranger* v. *City of New Orleans*, 98 U. S. 381; *United States ex rel. Harshman* v. *Knox County Court*, 122 U. S. 306; *Riggs* v. *Johnson County*, 6 Wall. 166.

The fact that a State court subsequently held the bond issue upon which the judgment was based to be unconstitutional, does not render such judgment invalid, irrespective of whether or not the issue of constitutionality was raised on the trial. *Chicot County Drainage Dist.* v. *Baxter State Bank*, 308 U. S. 371; *Woods Bros. Const. Co.* v. *Yankton County, S. D.*, (8th Cir.) 54 F. 2d 304, 81 A. L. R. 300.

This is the settled law in Texas. *Commonwealth of Mass.* v. *Davis*, (Tex. S. Ct.) 168 S. W. 2d 216, 220; *Security Trust Co. of Austin* v. *Lipscomb County*, (Tex. S. Ct.) 180 S. W. 2d 151. It is based on the fundamental rule announced in *Cromwell* v. *County of Sac*, 94 U. S. 351, to the effect that a judgment "is a finality as to the claim or de-

mand in controversy * * * not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose."

It is apparent, therefore, that the Petitioners are entitled to the relief sought unless barred therefrom by the reasoning and authorities relied upon in the majority opinion of the Circuit Court of Appeals, which will be considered under the succeeding Points.

POINT 3.

Mandamus to enforce a judgment at law against a public corporation in aid of execution does not give court authority to relitigate original cause of action.

The majority opinion of the Circuit Court of Appeals bases its affirmance of the judgment upon the ground that mandamus, while referred to as a legal remedy, is nevertheless governed by equitable principles and may be refused if, by reconsidering the subject matter of the judgment, the court finds it inequitable to grant the relief. The minority opinion properly dissents from this proposition. The majority, we think, confuses the rule as applicable to proceedings to enforce judgments in equity as distinguished from judgments at law.

Analysis of the cases involving the remedy of mandamus reflects three different rules which have been applied to this remedy.

1. That final judgments *at law* against municipalities must be enforced by this writ because execution is not available in most instances. Mandamus is, then, in effect, an execution. This is exemplified by the case of *Ralls County* v. *U. S.*, 105 U. S. 733, and others cited above in this brief.

2. Where a party returns to *a Court of Chancery* to obtain its aid in executing a former decree *in equity*, it is at the risk of opening up such decree as respects the relief to be granted on the new bill. *O'Brien* v. *Wheelock*, 184 U. S. 450; *Lawrence Mfg. Co.* v. *Janesville Cotton Mills*, 138 U. S. 552. Note: 139 A. L. R. 1507. This only applies where the original proceeding was *in equity*. It does not apply to *judgments at law*. See full discussion of this subject in *Drainage District No. 4* v. *Murphy*, (8th Cir.) 119 F. 2d 390.

3. Where *original proceedings* are instituted for the purpose of compelling public officials to act, mandamus will not be granted if the duty sought to be enforced is one which ought not to be performed. *This applies only to original proceedings and not to ancillary proceedings to enforce judgments previously obtained in courts of law.* The rule is exemplified by the holdings in the following cases.

Duncan Townsite Co. v. *Lane*, 245 U. S. 308 (Indian case).

U. S. v. *Fisher*, 222 U. S. 204 (Indian case).

U. S. v. *Ickes*, 117 F. 2d 769 (Indian case).

U. S. v. *Dern*, 289 U. S. 352 (Original proceeding against the Secretary of War).

This distinction is made apparent when the text relied upon in the majority opinion is studied. The majority bases its holding on the statements in 34 Am. Jur., Mandamus, Secs. 34-36, 40, pp. 830-834. The cases cited in support of these sections of the text deal with situations which fall under the second and third classifications, *supra*. Secs. 176 and 177, pp. 950-952, of the same text are applicable to the case at bar. A short quotation from this text illustrates this point. There it is said:

"Nor can the public corporation defeat the judgment and mandamus by drawing in question the validity and enforcibility of the cause of action or claim

upon which the judgment is based although the judgment was taken against the corporation by default. So, the respondent cannot successfully urge want of consideration for the claim or invalidity of the bonds or coupons on which the judgment is rendered. And it is generally held that it is no defense to a writ of mandate to compel a public corporation to issue its warrant in payment of a judgment, that the contract upon which the judgment was obtained was void because, at the time of entering into it, the corporation was beyond the constitutional limit of indebtedness, since such defense should have been set up in the action, and the recovery of the judgment is not itself the creation of the indebtedness," citing *Louisiana ex rel. Nelson* v. *St. Martins Parish*, 111 U. S. 716, and *Davenport* v. *Lord*, 9 Wall. 409.

We respectfully submit that the majority opinion incorrectly announced the rule concerning ancillary writs to enforce valid judgments at law.

POINT 4.

Brownsville v. Loague applies only where there is total absence of power, not where there is a defective exercise of power.

A proper understanding of this point requires consideration of the nature of the Respondent District and of the bonds it is authorized to issue. The District is organized under authority of Article XVI, Section 59, of the Constitution of Texas, and is governed by the provisions of Article 7880, Sections 1 *et seq.*, Revised Civil Statutes of Texas (App. 43 to 133).

By virtue of such constitutional and statutory provisions, the Respondent District was authorized to issue three types of bonds:

(a) Preliminary bonds;

(b) Construction bonds;

(c) Interim Bonds.

The power and authority to issue each type of bonds is outlined in the opinion in the case of *State ex rel. Abney* v. *Miller*, 133 Tex. 498, 128 S. W. 2d 1134, 1136, as follows:

> "The applicable statutes enacted pursuant to such authority are Vernon's Civil Statutes, Title 128, Chapter 3A, Article 7880-1 *et seq.* These statutes make provision for the issuance of three classes of bonds. First, preliminary bonds, the sale of which is designed to furnish funds to make preliminary investigations; second, construction bonds, designed to furnish funds for the construction of irrigation facilities; and third, interim bonds, designed to make readily available funds for engineering and other expenses arising after construction bonds have been voted and before they are sold. The bonds involved in the present litigation are of the third class. By the express provision of the Constitution authorizing the creation of these districts and the issuance of bonds by them (Art. 16, Sec. 59 (c)), the Legislature is forbidden to authorize the issuance of any bonds unless such proposition shall first be submitted to the qualified taxpaying voters of the district.
>
> "The statutes (Article 7880-1 *et seq.*, Vernon's Civil Statutes) provide that preliminary bonds and construction bonds must be voted upon. There is no provision for a separate vote upon interim bonds. If, as contended, these bonds create an indebtedness against the district in addition to that authorized by the construction bonds and are not voted upon, they are obviously void, because in contravention of the express language of the constitution above referred to. A consideration of the statutes relating to these bonds has led us to the conclusion that no additional indebtedness against the district is created by their issuance. They constitute, in effect, a method of

making readily available a portion of the proceeds of the sale of construction bonds in order that the project for which the district was formed may proceed without delay. The right to issue such bonds in accordance with the terms of the statutes is a right flowing from the right to issue construction bonds. According to the allegations, at the time the construction bonds were voted, there was in effect a statute (Art. 7880-84a, Vernon's Civil Statutes, Acts, 1929, 1st Called Sess., Ch. 82, Sec. 1, later amended) authorizing a district which had voted construction bonds to issue interim bonds in an amount equal to ten per cent of the principal amount of the construction bonds which had been voted and not sold. The right so to issue said bonds was a right running with, and attached to, the construction bonds. When the district voted on the proposition of the issuance of construction bonds, the provisions of the applicable statutes became a part of the proposition voted upon. *San Saba County* v. *McCraw*, 130 Tex. 54, 108 S. W. 2d 200.

"When the voters of the district indorsed the proposition of issuing construction bonds in the principal sum of $5,500,000, they also voted to authorize the issuance of interim bonds in the amount and upon the terms then prescribed by statute. They did not authorize an indebtedness of $5,500,000 represented by construction bonds and an additional indebtedness represented by interim bonds, but they did authorize the issuance of interim bonds as a convenient method of procedure pending the sale of the construction bonds, which interim bonds were to be discharged by the taxes levied in support of the construction bonds and the proceeds of the sale of the construction bonds. We overrule the contention that the statute authorizing the issuance of interim bonds contravenes the constitutional provision above referred to, which denies to the Legislature the authority to authorize the issuance of bonds without a vote of the district. We hold that interim bonds, when issued in accordance with the statute existing at

the time the construction bonds are voted, are themselves authorized by the voters."

It is settled, therefore, that the Respondent District had *the power* to issue interim bonds. It was limited in this power to ten per cent of the amount of the construction bonds authorized by vote, according to the decision of the Texas Supreme Court.

In order that it may be demonstrated that the only vice in these bonds lay in the fact that they were issued in excess of the constitutional limitations, the following recitation of the facts leading up to their issuance may be helpful.

On March 14, 1930, the voters of the Respondent District authorized the issuance of construction bonds in the amount of $5,500,000 (R. 203-204).

At the time this vote was taken Article 7880-84a, (1) (App. 90) provided:

> "The securities evidencing such emergency loan shall be known as 'interim Bonds'. They shall mature not later than five (5) years from date of issue, and shall be redeemable at any time prior to maturity as is hereinafter provided. The principal amount of such emergency loan shall not exceed ten per cent (10%) of the principal amount of the bonds of the district which have been voted, but not sold; provided, however, that before the issuance of such bonds the board of directors of any district desiring to issue same may by resolution duly passed limit the issue to any amount less than ten per cent (10%), and when such amount is determined and fixed by resolution, no additional 'interim bonds' may be issued and sold until all outstanding 'interim bonds' have been paid in full."

Subsequently the Legislature of Texas amended this section, effective April 9, 1930, changing the terms thereof

so as to provide that such interim bonds could be issued in an amount equal to twenty-five per cent of the construction bonds, and the maturity date could be fixed at not later than ten years from the date of their issuance (App. 90).

The change in the permissible maturity date is wholly immaterial. Both statutes are identical in regard to the following particulars:

> "To secure the loan evidenced by such 'interim bonds' the board of directors shall appropriate the tax levied for the payment of the bonds deposited to the credit of the 'interest and sinking fund account' of such 'interim bonds', or so much of such tax as may be necessary for that purpose, and the proceeds of such tax, when collected shall be devoted exclusively to the payment of the principal and interest of such 'interim bonds'; provided, however, that nothing in this Act shall be construed as prohibiting the sale of any bonds of the district deposited to the credit of the 'interest and sinking fund account' of the 'interim bonds', or any other bonds of such district, but in event of the sale of any such bonds it is hereby made the duty of the district depository to apply the proceeds to any such sale, first, to the payment of the principal and accrued interest of all such 'interim bonds', and the remainder to the purposes for which any such bonds may have been authorized; and, provided, further, that in the event none of the bonds of the district shall have been sold at the time of the maturity of any installment of the principal or interest on the 'interim bonds', it shall be the duty of the depository to cancel bonds so deposited, and annexed interest coupons, equal in amount to the principal and interest of any such 'interim bonds' so paid off and discharged.
>
> "Said 'interim bonds' shall be redeemable, at the option of the board of directors of said district, at any

time or times prior to maturity, upon payment by the district of principal and interest accrued to date fixed for redemption by said board, and whenever any such 'interim bonds' are called in for redemption before maturity, notice thereof in writing shall be given to the bank or banking house named as the place of payment in such bonds, or to its successors or assigns, by the secretary of the board of directors of this district. The secretary shall designate in such notice the bond or bonds so called for redemption and payment, setting forth the number or numbers thereof, and the date fixed for the redemption thereof, which date shall be not more than sixty (60) days after the date notice of call for payment is made. In event any of such 'interim bonds' so called for redemption are not presented, the same shall cease to bear interest from and after the date so fixed for redemption" (App. 92-93).

From the provisions above quoted, it will be seen that in legal effect the maturity of the interim bond, that is, the time it will be paid, rests entirely within the discretion of the board of directors of the district. The interim bonds mature when the construction bonds are sold. In legal effect the so called "maturity" of an interim bond issued under Article 7880-84a cannot be either five or ten years, for the simple reason that no provision is made or required by the statute for the discharge of the interim bonds, other than the sale of construction bonds. Obviously these interim bonds cannot be paid at the end of five years, or at the end of ten years, unless the construction bonds are sold. If the construction bonds are not sold at the end of five years, or at the end of ten years, the bondholders' remedy is obviously an action to force the board of directors to sell the construction bonds. This being true, the so-called "five year maturity date," or the "ten year maturity date" is necessarily a covenant entered into be-

tween the district on one hand, and the bondholder on the other hand, which binds the bondholder not to sue for the purpose of forcing a sale of the construction bonds until the expiration of five years or ten years, as the case may be. A so called "five year interim bond," properly construed under the statute authorizing the issuance of said bond, is an obligation binding upon the district to pay the amount of money represented by the interim bond out of the sale of the construction bonds of the district, and a covenant binding upon the bondholder that he will not bring an action to force the board of directors to sell the construction bonds prior to five years from the date of issuance.

As a five year "maturity date" upon an interim bond must, under the statute, be construed as a covenant not to sue, a ten year "maturity date" upon an interim bond is also a covenant not to sue.

After the amendment of April 9, 1930, had gone into effect, and on April 28, 1930, the board of directors of Respondent District made and authorized the issuance of $1,265,000 in construction bonds, and $1,150,000 in interim bonds (R. 216-234). These interim bonds bore date of April 10, 1930 (retroactive of the date of their authorization), which date was one day after the amendment had become effective (R. 219).

However, only $656,000 worth of such interim bonds were actually put in circulation (R. 252-255, 510-511).

Because the amendment authorizing the issuance of interim bonds in the amount of twenty-five per cent of the construction bonds was not in effect at the time the vote was taken, the Supreme Court of Texas held that, although the District could have lawfully issued $550,000 in interim bonds under the authority of such vote, it could

not issue such bonds in excess of that amount. We quote the pertinent part of the opinion in *State ex rel. Abney* v. *Miller, supra*:

> "But we do not hold that the interim bonds under attack were validly issued. The election by which the district authorized the issuance of $5,500,000 of construction bonds was held on March 14, 1930. At that time the statute, Article 7880-84a, Acts, 1929, 1st Called Sess., Ch. 82, Sec. 1, authorized the issuance of interim bonds in an amount not to exceed ten per cent of the principal amount of the unsold construction bonds. The statute further provided that such interim bonds should mature not later than five years from the date of their issue. As above stated, the voters at that election authorized the issuance of interim bonds in the amount and upon the terms provided by that statute. They did not authorize the issuance of such bonds in any greater amount than, or upon any terms different from those provided therein. After the election authorizing the issuance of construction and interim bonds, an amendment of Article 7880-84a of Vernon's Statutes became effective authorizing interim bonds in an amount not to exceed 25 per cent of the principal amount of the unsold construction bonds, and providing that such bonds should mature not later than ten years from the date of their issue. The amendment became effective April 9, 1930. Acts, 41st Legislature, Fifth Called Session, Ch. 31, p. 163. The bonds here involved were issued the day after the amendment became effective. According to the allegations, they were issued to an amount of more than twenty per cent of the principal amount of the construction bonds and matured ten years from the date of their issuance. Such bonds were not authorized by the voters.
>
> "We do not hold that Article 7880-84a, as amended, authorizing the issuance of ten-year interim bonds to an amount of 25 per cent of the construction

bonds, is unconstitutional. That question is not involved. What we hold is that the amendment may not be given retroactive effect, but is applicable only to bonds voted after its effective date. The validity of interim bonds, as of all other bonds, must be tested by the law as it existed when their issuance was authorized. While interim bonds do not operate to create an additional indebtedness against the district, they are nevertheless bonds of the district and can be issued only in accordance with the statutes as they existed when they were authorized. By authorizing the issuance of $5,500,000 of construction bonds, the voters authorized the governing authorities of the district to issue five-year interim bonds to an amount equal to ten percent thereof and to hypothecate construction bonds to the extent of 110 per cent of the amount of the interim bonds as security for the payment of the latter. It was a valuable right given them by law to determine the amount of construction bonds which could be hypothecated and the length of time for which they might be hypothecated. Having determined by their vote the terms and conditions upon which interim bonds could be issued and construction bonds could be hypothecated, the officers of the district could not thereafter impose different terms and conditions. The petition is sufficient to allege that the voters authorized the issuance of five-year interim bonds to the amount of ten per cent of the construction bonds, and that such bonds were not issued, but instead there were issued ten-year bonds to an amount in excess of twenty per cent of the construction bonds. We, therefore, conclude that the validity of such bonds was sufficiently put in question to authorize the trial court to grant the temporary injunction."

It is apparent, therefore, that the only vice in these bonds lay in their issuance in excess of the limitations imposed thereon by statute at the time the vote was taken.

This clearly presents a situation where a bond issue is held to be invalid, not because of a total absence of power in the issuing body, but because of a defective exercise of such power.

The basis for the holding in *Brownsville* v. *Loague* is stated by Mr. Chief Justice Fuller on p. 502 of Vol. 129 U. S., as follows:

> "This express grant fell with the abrogation of the act by the taking effect on the 5th of May, 1870, of the new State Constitution, and in *Norton* v. *Brownsville*, *ante*, 785, we have held that the bonds, upon coupons detached from which the judgments sought to be collected here were rendered, were void, *not because of a defective exercise of the power to issue them, but because of a total absence of such power*" (Italics ours).

Had Article XVI, Section 59, of the Constitution of Texas, been repealed prior to the time the construction bonds were voted, the issuing body would have lacked any power to issue such bonds and the doctrine of *Brownsville* v. *Loague* would apply. But where there was a mere defective exercise of such power, as where the bonds were issued in an excessive amount, such doctrine does not apply. This was expressly held in the case of *Estill County* v. *Embry*, (6th Cir.) 144 Fed. 913, from which we quote:

> "Counsel for plaintiff in error rely upon the case of *Brownsville* v. *Loague*, 129 U. S. 493, 9 S. Ct. 327, 32 L. Ed. 780, but in that case there were two essential facts which distinguish it from the case at bar. These were, first, the City of Brownsville, in addition to its power to levy taxes for ordinary municipal purposes, was given power to levy taxes for the purpose of paying bonds, which it was authorized to issue for stock in a railroad corporation, by an act of the

Legislature passed February 8, 1870. On May 5 of that year a new constitution of the State went into effect, which repealed the act of February 8, 1870. On May 12, 1870, the mayor and aldermen of the city passed a resolution to submit to the electors the question of subscribing for the stock of the railroad company. The election took place on June 11th following, and resulted in favor of the proposition, and on July 1, 1870, the bonds were issued. Suit was brought thereon, and judgment recovered by default. Upon an application for a mandamus to compel the levy of a tax to pay the judgments, the Supreme Court held that the court might go behind the judgment, and inquire into the validity of the cause of action, and, upon ascertaining that the bonds on which the judgment rested were void, held that the writ should be denied. As is seen from the foregoing statement, the power to issue bonds and the power to levy taxes for paying such bonds had both been taken away by the new constitution. The bonds were held void, 'not' says Chief Justice Fuller, 'because of a defective exercise of the power to issue them, but because of a total absence of such power' * * *."

The Circuit Court of Appeals in the Estill County case, after demonstrating the distinction between a total lack of power, as existed in *Brownsville* v. *Loague*, and a defective exercise of power, as in the case at bar, had this to say with reference to the cause before it:

> "The question of their (the bonds') validity covered every fact essential thereto, and the judgment necessarily affirmed their existence. If the county has not in these suits presented every defense to the cause of action, it might have done so, and, it being the same cause of action, the estoppel is complete. If the plaintiff was entitled to the judgment he has recovered, he is entitled to the fruits of it;

and, if the county will not pay it, he is entitled to this remedy (mandamus)."

Subsequent to the decision in *Brownsville* v. *Loague*, it has been expressly held on numerous occasions that the judgment of a court conclusively estops the defendants from making the defense that the original indebtedness was in excess of the amount which the district had the power to create under the Constitution of the State. In the case of *Board of Commissioners* v. *Platt*, (8th Cir.) 79 Fed. 567, it is said:

> "Our conclusion is that in an action to enforce the collection of a judgment or the collection of bonds or coupons issued in payment of a judgment against municipal or *quasi* municipal corporations, the judgment conclusively estops the corporation from making the defense that the original indebtedness evidenced by it was in excess of the amount which the corporation had the power to create, under limitations of the Constitution of the State in which it was incorporated" (Citing numerous cases). * * * "the cases of *Commissioners* v. *Loague*, 129 U. S. 493, 503, 505, 9 S. Ct. 327, and *Kelly* v. *Town of Milan*, 21 Fed. 842; *id.*, 127 U. S. 139, 8 S. Ct. 1101, are not in conflict with this conclusion. The opinion and the effect of the decision in the former case are explained and limited in *Franklin Co.* v. *German Sav. Bank*, 142 U. S. 93, 100, 12 S. Ct. 147."

This case was followed, and the principle announced was reiterated, in *Geer* v. *Board of Commissioners of Ouray County*, (8th Cir.) 97 Fed. 435, the facts of which are closely analogous to those in the case at bar.

See also: *Franklin County* v. *The German Savings Bank*, 142 U. S. 93; *Mayor, etc., of the City of Helena et al.* v. *Helena Waterworks Co.*, (9th Cir.) 104 Fed. 113; *City of Mohall* v. *First Nat. Bank of Sleepy Eye*, (8th Cir.) 105

F. 2d 315; *City of Hialeah* v. *United States,* (5th Cir.) 87 F. 2d 953.

The fact that only a defective exercise of power, as distinguished from a total absence of power, is involved in this case is further illustrated by the facts recited in the concurring opinion in the companion case of *Holderman* v. *Hidalgo County Water Control and Improvement District No. 12 et al.,* 142 F. 2d 792, tried with this case.

The fact that Petitioners recited in their pleading, the statutory proceedings by which the Respondent District is enabled to raise the funds for the payment of the judgment, does not bring this case under the doctrine of *Brownsville* v. *Loague.* This is demonstrated by the holding of the Seventh Circuit in *Cushman* v. *Warren-Scharf Asphalt Paving Co.,* 220 Fed. 857, wherein it is said:

> "Fifth. The ancillary proceeding was based upon the judgment itself and the obligation thereby declared and created. The recital in the bill of complaint of the facts leading up to the judgment does not make it an original suit in equity based upon the alleged pre-existing obligation as in *Brownsville* v. *Loague,* 129 U. S. 493, 9 S. Ct. 327, 32 L. Ed. 780, and while a court of equity, when called upon to aid in executing its own former consent decree, may decline to treat it as *res judicata,* and may therefore refuse to deem it binding in respect to the relief granted on the new bill (*Lawrence Mfg. Co.* v. *Janesville Cotton Mills,* 138 U. S. 553, 11 S. Ct. 402, 34 L. Ed. 1005) it has no power, either in an original or ancillary proceeding to go behind a judgment at law, jurisdictionally valid and free from fraud, in search of errors, however gross. *Tilton* v. *Cofield,* 93 U. S. 163, 167, 23 L. Ed. 858; *New Orleans* v. *Fisher,* 180 U. S. 185, 21 S. Ct. 347, 45 L. Ed. 485."

Furthermore, in their Supplemental Petition, Petitioners sought, alternatively, general relief for the enforcement of their judgment. There the prayer is:

> "Plaintiffs would further show that said judgment rendered in the case of *W. L. Shumate, Jr.*, v. *Hidalgo County Water Control and Improvement District No. 12*, hereinabove mentioned, was one rendered upon interest coupons which matured before the date of said judgment. That it was the legal duty of defendant directors of said district to have levied and collected sufficient tax to pay off and discharge said judgment or the interest coupons represented thereby, during the years 1931 to 1937, inclusive, but that said defendants have wrongfully failed and refused to do so and should in this proceeding be compelled by writ of mandamus to levy a sufficient tax for said years 1931 to 1937, inclusive, to pay off and discharge said judgment, both as to principal and interest, making a proper provision for such delinquencies in the payment of taxes which may be levied and assessed, as is reasonable to anticipate. That in all events, defendants should be required to levy and collect sufficient taxes to pay off said judgment within a reasonable length of time, to be determined in the sound discretion of the Court, and in this connection plaintiffs would show that there was no constitutional or statutory limit upon the rate of taxes that may be adopted by said district. as the same is a water control and improvement district organized under the constitutional grant of power contained in Article XVI, Section 59, of the Constitution of the State of Texas.
>
> "Wherefore, Premises Considered, these plaintiffs pray judgment of the Court in accordance with the prayer contained in their original petition filed herein; that all necessary and proper writs of mandamus issue, in order to make effective the relief herein prayed for by plaintiffs, to-wit, the collection of their said Judgment" (R. 88-89).

We respectfully submit, in the light of the foregoing, that the doctrine of *Brownsville* v. *Loague* is no bar to Petitioners' remedy for the enforcement of their judgment.

Conclusion.

Wherefore, Petitioners respectfully submit that this case is one over which this Honorable Court has jurisdiction, and one calling for the exercise by this Court of its supervisory powers, by granting a Writ of Certiorari and thereafter reviewing and reversing said decision, granting to Petitioners the relief to which they are entitled.

W. C. Laycock,
J. D. Norwood,
W. C. Laycock,
In His Capacity As Agent for the Sole Benefit of W. C. Laycock and J. D. Norwood,

By W. R. MONTGOMERY,
Counsel for Petitioners.

By W. R. Montgomery
Of Counsel.

Edinburg, Texas

APPENDIX.

Article XVI, Section 59, Constitution of Texas

Sec. 59a. The conservation and development of all of the natural resources of this State, including the control, storing, preservation and distribution of its storm and flood waters, the waters of its rivers and streams, for irrigation, power and all other useful purposes, the reclamation and irrigation of its arid, semi-arid and other lands needing irrigation, the reclamation and drainage of its over-flowed lands, and other lands needing drainage, the conservation and development of its forests, water and hydro-electric power, the navigation of its inland and coastal waters, and the preservation and conservation of all such natural resources of the State are each and hereby declared public rights and duties; and the Legislature shall pass all such laws as may be appropriate thereto.

(b) There may be created within the State of Texas, or the State may be divided into, such number of conservation and reclamation districts as may be determined to be essential to the accomplishment of the purposes of this amendment to the constitution, which districts shall be governmental agencies and bodies politic and corporate with such powers of government and with the authority to exercise such rights, privileges and functions concerning the subject matter of this amendment as may be conferred by law.

(c) The Legislature shall authorize all such indebtedness as may be necessary to provide all improvements and the maintenance thereof requisite to the achievement of

the purposes of this amendment, and all such indebtedness may be evidenced by bonds of such conservation and reclamation districts, to be issued under such regulations as amy (may) be prescribed by law and shall also, authorize the levy and collection within such districts of all taxes, equitably distributed, as may be necessary for the payment of the interest and the creation of a sinking fund for the payment of such bonds; and also for the maintenance of such districts and improvements, and such indebtedness shall be a lien upon the property assessed for the payment thereof; provided the Legislature shall not authorize the issuance of any bonds or provide for any indebtedness against any reclamation district unless such proposition shall first be submitted to the qualified property tax-paying voters of such district and the proposition adopted. (Sec. 59, Art. 16, adopted election Aug. 21, 1917; proclamation October 2, 1917.)

Article 7880 - Revised Civil Statutes of Texas (Sections omitted not pertinent)

Art. 7880-1. May be organized; petition

Water control and improvement districts may be organized in the State of Texas within the terms and provisions of Section 52 of Article 3 of the State Constitution, and within the terms and provisions of Section 59 of Article 16 of the State Constitution. Petition for organization of such districts shall state the section and article under which same are to be organized, and such districts shall be organized and operated under the conditions, provisions, authority and restrictions therein provided. (Acts 1925, 39th Leg., ch. 25, p. 86, sec. 1.)

Art. 7880-2. Purposes

Water control and improvement districts may be organized under the provisions of Section 52 of Article 3

of the Constitution for the purposes therein provided as follows:

(a) The improvement of rivers, creeks, and streams to prevent overflows, and to permit of navigation thereof or of irrigation thereof, or in aid of such purposes.

(b) The construction and maintenance of pools, lakes, reservoirs, dams, canals and waterways for the purpose of irrigation, drainage, or navigation, or in aid thereof. (Acts 1925, 39th Leg., ch. 25, p. 87, sec. 2.)

Art. 7880-3. Additional purposes

Water Control and Improvement Districts may be organized under the provisions of Section 59, of Article 16 of the Constitution for any one or more of the purposes therein provided as follows:

"Including the control, storing, preservation and distribution of its waters and flood waters, the waters of its rivers and streams, for irrigation, power and all other useful purposes, the reclamation and irrigation of its arid, semi-arid and other lands needing irrigation, the reclamation and drainage, the conservation and development of its forests, waters and hydro electric power, the navigation of its coastal and inland waters, the preservation and conservation of all such natural resources of the State,"; and, such districts when organized shall have power to control, abate and amend any shortage, or harmful excess of waters, and to protect, preserve and, when necessary, restore, the purity and sanitary condition of waters within the State of Texas: These objects may be accomplished by any and all practicable means.

Such districts may be organized for the sole purposes to conduct preliminary surveys wherefrom to determine whether improvements are needed, and further to deter-

mine what improvements, if any, are required to promote the public welfare.

(a) Further, districts may be created hereunder to become and be known as Master Districts which may embrace all or any part of the area of one or more districts created and operating under the provisions of said Chapter 25, or under either Chapter 2, 3, 4, 6, 7 or 9 of Title 128 of the Revised Civil Statutes of Texas:

(b) Districts to be created as Master Districts may be created in order to conduct preliminary surveys and to develop a plan for the control and the use of the waters of any given stream, to the end that the improvements upon one part of a water shed will be mechanically and economically related to all other improvements upon such streams or its water shed;

(c) Districts to be created as Master Districts may be created in order to enable districts to pool their resources when necessary economically to make preliminary surveys, to adopt a plan to co-ordinate the plants, improvements and facilities of the several constituent districts, to the improvements and facilities proposed to be constructed and furnished by the Master District, to provide improvements for the common benefit of the several districts, or to enable such districts jointly to make purchases, or to maintain, or to operate works for the common benefit of the several districts;

(d) Such districts when created shall have the power to levy and collect taxes, equitably distributed, which taxes shall be in addition to other taxes that may be lawfully levied by the several districts constituting a part of such Master District;

(e) It is expressly provided, however, that each District composing part of a Master District shall for all purposes of an election constitute a separate voting unit, and no existing district may be included in a Master District unless the proposal so to do is approved by a majority of the voting qualified electors of such constituent district;

(f) Jurisdiction to hear and determine petitions for the creation of a Master District shall be exclusively exercised by the State Board of Water Engineers. Master Districts may have directors to number 5, 7 or any other uneven number up to 21, to be determined at the time of the creation of the district and to be thereafter subject to change by the directors of the district in such manner as to conform to the requirements for equitable representation for the various areas of such Master District. The election and qualification of such directors shall, insofar as applicable, be controlled as provided in said Chapter 25, or any amendments thereof.

(g) Other than as in this section provided, the procedure for the creation of a Master District, the conduct of its affairs, and its powers, shall, insofar as applicable and practicable, be the same as is provided by said Chapter 25 to control districts created thereunder. (Acts 1925, 39th Leg., p. 87, ch. 25, sec. 3; Acts 1927, 40th Leg., 1st C. S. p. 496, ch. 107, sec. 1; Acts 1929, 41st Leg., p. 478, ch. 280, sec. 2.)

* * * * * * * *

Art. 7880-4. Area included

Such districts may include the area of any county or counties, or any portion thereof, including towns, villages, or municipal corporations. Such districts may include any county and number of counties, or any political sub-

divisions of the State, and defined district or parts of any or all counties in the State of Texas; and the land composing said districts need not be in one body, but may consist of separate bodies of land separated by land not embraced in the district; provided, however, that each segregated area must cast a majority vote in favor of the creation of the district before such segregated area can be included in the district.

Provided that no district provided for in this Act shall embrace territory situated in more than one county except by a majority vote of the property tax paying voters residing within the territory in each county sought to be embraced within said District. (Acts 1925, 39th Leg., p. 87, ch. 25, sec. 4; Acts 1927, 40th Leg., 1st C. S., p. 496, ch. 107, sec. 2.)

Art. 7880-4a. Preference in use of water

Districts organized under the provisions of this Act may in the discretion of their directors award use of waters of the district in the following order of preference and superiority, viz.:

1st. Domestic and municipal use;

2nd. Industrial use, other than the development of hydro-electric power;

3rd. Irrigation;

4th. Development of hydro-electric power;

5th. Pleasure and recreation.

Where the welfare of the district may require, the directors of such district may withdraw water from an inferior use and appropriate such water to a superior use, as hereinabove given discretionary preference. Whenever such diversion or withdrawal will affect a vested right,

such withdrawal or diversion must be after condemnation proceedings as provided for in Section 126 of this Act. (Acts 1925, 39th Leg., p. 86, ch. 25, sec. 4a, as added Acts 1927, 40th Leg., 1st C. S., p. 496, ch. 107, sec. 3.)

* * * * * * * *

Art. 7880-6. Tax levy and sinking fund.

Water control and improvement districts organized under the provisions of Section 59 of Article 16 of the Constitution may incur all such indebtedness as may be necessary to provide all improvements, and the maintenance thereof, requisite to the achievement of the purposes for which it was authorized to be created, and all such indebtedness may be evidenced by bonds to be issued as prescribed by law, and such districts are authorized to levy and collect all such taxes, equitably distributed, as may be necessary for the payment of the interest and the creation of a sinking fund for the payment thereof, and also for the maintenance of such districts and improvements, and such taxes shall be a lien upon the property assessed for the payment thereof. (Acts 1925, 39th Leg., ch. 25, p. 87, sec. 6.)

Art. 7880-7. Powers

All districts operating under the provisions hereof shall have, and may exercise, such functions, powers, authority, rights and duties as may permit the accomplishments of the purposes for which such districts may be created, including the investigation, and in case a plan for improvements is adopted, then, the construction, maintenance, and operation of all necessary improvements, plants, works and facilities, the acquisition of water rights and all other properties, lands, tenements, easements, and all other rights helpful to the purpose of the organization of the district, subject only to the restrictions imposed by

the Constitution of the State of Texas or that of the United States:

(a) It further is expressly provided that such districts shall have the power to adopt and promulgate all reasonable regulations to secure and maintain safe, sanitary, and adequate plumbing installations, connections, and the appurtenances thereto, as subsidiary parts of sanitary sewer systems, and, as well for preserving the sanitary condition of all water controlled by the district, to prevent waste of water or the unauthorized use thereof, to regulate residence, hunting, fishing, boating and camping, and all recreational and business privileges, upon any body or stream of water, or, any body of land, or easement owned or controlled by such district; and to include the right to make contracts with responsible persons for the construction and operation of toll bridges over the district's water, or for ferry service on or over the district's water (to cover periods of time not to exceed twenty years in the case of a bridge and not to exceed ten years in the case of a ferry), fixing the compensation to be charged for service by any such facility, to the end that the same be reasonable and requiring adequate bond or bonds from any such contracting person, association or corporation, payable to the district, to be of such amount and conditioned as the judgment of the directors of the district may deem to be required; and, such contracts may provide for forfeiture of the particular franchise in case of a failure of the licensee to render adequate public service.

(b) Such district may prescribe reasonable penalties for the breach of any regulation of the district, which penalties shall not exceed fines of more than Two Hundred Dollars ($200.00), or imprisonment for more than Thirty (30) days, or may provide both such fine and such

imprisonment. The penalties hereby authorized shall be in addition to any other penalties provided by the laws of Texas and may be enforced by complaints filed in the appropriate court of jurisdiction in the county in which the district's principal office is located; provided, however, that no rule or regulation which provides a penalty for the violation thereof shall be in effect, as to enforcement of the penalty, until five days next after the district may have caused a substantive statement of the particular rule or regulation and the penalty for the violation thereof to be published, once a week for two consecutive weeks, in one or more newspapers affording general circulation in the area in which the property of the district is situated; and, the substantive statement so to be published shall be as condensed as is possible to afford an intelligent direction of the mind to the object sought to be accomplished or the act forbidden by the rule or regulation; one notice may embrace any number of regulations; there must be embraced in the notice advice that breach of the particular regulation, or regulations, will subject the violator to the infliction of a penalty and there also shall be included in the notice advice that the full text of the regulations sought to be enforced is on file in the principal office of the district, where the same may be read by any interested person. Five days after the second publication of the notice hereby required, the advertised regulation shall be in effect, and ignorance of any such regulation shall not constitute a defense to a prosecution for the enforcement of a penalty; and, the rules and regulations authorized hereby, after the required publication, shall judicially be known to the courts and shall be considered of a nature like unto that of valid penal ordinances of a city of the State.

(c) It further is expressly provided that such districts shall have the power to employ and constitute their

own peace officers, with power to make arrests when necessary to prevent or abate the commission of any offense against the regulations of the district, and against the laws of the State of Texas, when any such offense, or threatened offense, occurs upon any land, water, or easement owned or controlled by the district; or, to make such arrest at any place, in case of an offense involving injury or detriment to any property owned or controlled by such district. (Acts 1925, 39th Leg., p. 88, ch. 25, sec. 7; Acts 1929, 41st Leg., p. 578, ch. 280, sec. 3; Acts 1935, 44th Leg., p. 792, ch. 340, sec. 3.)

* * * * * * * *

Art. 7880-9. Vote in districts organized under section 59

In all districts organized under the provisions of Section 59 of Article 16 of the Constitution, no bonds shall be issued or any indebtedness incurred unless such proposition shall first be submitted to the qualified property tax paying voters of such district and the proposition be adopted by not less than a majority of such qualified persons voting thereon. (Acts 1925, 39th Leg., ch. 25, p. 88, sec. 9.)

Art. 7880-10. Petition

Petition for the organization of a water control and improvement district shall be signed by a majority in number of the holders of title to the lands therein, and the owners of a majority in value of the lands therein, as shown by the county tax rolls, provided, if the number of such land owners therein is more than fifty, such petition shall be sufficient if same is signed by fifty land owners. Such petition may be signed and filed in two or more copies. (Acts 1925, 39th Leg., ch. 25, p. 88, sec. 10.)

Art. 7880-11. Contents of petition

The petition shall designate the name of the district, the area and boundaries thereof, the provision of the Constitution under which same is to be organized, the purpose or purposes of same. Said petition shall state the general nature of the work to be done, the necessity thereof, the feasibility thereof, with reasonable detail and definiteness in order that the court or board passing on same may understand therefrom the purpose, utility, feasibility and need or necessity therefor. The petition shall state the estimated cost of the project as then estimated by those filing such petition from such information as they may have at that time. (Acts 1925, 39th Leg., ch. 25, p. 88, sec. 11.)

Art. 7880-12. Filing of petition

Said petition shall be filed in the office of the county clerk of the county in which the district is situated. If land in more than one county is included, copies of the petition certified by such clerk shall be filed in the office of the county clerk of each county on which a portion thereof lies. Said petition shall be recorded in a book kept for that purpose in the office of the county clerk. When more than one petition or copy is filed and same are identical except as to the signature thereon, one copy shall be recorded and all signatures of such copies shall be included. (Acts 1925, 39th Leg., ch. 25, p. 88, sec. 12.)

Art. 7880-13. Formation of district

When the land to be included in a district lies within one county, the formation thereof shall be considered and ordered by the county commissioners' court, and when the land in such a district is in two or more counties the formation thereof shall be considered and ordered by the

State Board of Water Engineers. (Acts 1925, 39th Leg., ch. 25, p. 89, sec. 13.)

Art. 7880-14. Date of hearing

When a petition is filed for the organization of a district within one county the county judge shall make an order setting the date of hearing thereof by the county commissioners' court, and shall endorse same on said petition or on a paper attached thereto. The county clerk shall thereupon issue a notice of such hearing. Said petition may be considered at a regular or special session of said courts. (Acts 1925, 39th Leg., ch. 25, p. 89, sec. 14.)

Art. 7880-15. Notice of hearing

The notice of hearing of a petition for the formation of a district shall contain a statement of the nature and purpose thereof, the date and time and place of hearing. The notice shall be prepared with one original and three copies. The county clerk will retain one copy in his files and deliver the original and two copies to the county sheriff. The sheriff shall post one copy at the court house door fifteen days prior to the date of hearing and shall publish one copy in a newspaper of general circulation in the county once a week for two consecutive weeks, the first publication thereof to be made at least twenty days prior to the date of hearing. He shall make due return of service thereof with copy and affidavit of publication attached on the original prior to date of hearing. (Acts 1925, 39th Leg., ch. 25, p. 89, sec. 15.)

Art. 7880-16. Designation of districts.

All districts organized under the provisions hereof shall be known and designated as Water Control Improvement Districts. Such districts lying in one county shall

be named: .....County Water Control and Improvement District, Number....., filling in name of county and proper consecutive number. (Acts 1925, 39th Leg., ch. 25, p. 89, sec. 16.)

Art. 7880-17. Contest of creation.

Upon the day set for hearing upon a petition for the organization of a district by the county commissioners' court, or by the State Board of Water Engineers, any person whose land is included in or would be affected by the creation of such district may appear and contest the creation thereof and may offer testimony to show that such district is or is not necessary, would or would not be a public utility, and would or would not be feasible or practicable. Such hearing may be adjourned from day to day. (Acts 1925, 39th Leg., ch. 25, p. 89, sec. 17.)

Art. 7880-18. Jurisdiction; hearing

If the Commissioners' Court either grant or refuse the petition, any person who signed the petition, or any person who did actually appear and protest said petition and offer testimony against the creation of the district, may appeal from the order of the court by giving notice of appeal in open court at the time of the entry of the order, which shall be entered on the court's docket, and by filing with the clerk of the court within five days a good and sufficient appeal bond in the sum of $2,500.00, to be approved by the clerk, payable to the County Judge, conditioned for the prosecution of such appeal with effect and the payment of all costs incurred on such appeal in case the final decree of the court shall be against the appellant. Upon completion of an appeal, as herein provided, the clerk of the Commissioners' Court shall within ten days prepare a certified transcript of all orders entered by the Commis-

sioners' Court and transmit the same together with all original documents, processes and returns thereon to the clerk of the district court to which the appeal may be taken. All persons shall be charged with notice of such appeal without notice or service thereof, but no person who failed to appear by petition, or in person or by attorney, in the Commissioners' Court shall be permitted to intervene in the district court trial. The district court, or the judge thereof, either in term time, or in vacation time, shall set said cause down for hearing with all reasonable dispatch, and shall give said cause precedence over all causes not of like character; Formal pleadings shall not be required, but, with the court's permission, may be filed. The trial and decision shall be by the court without the intervention of a jury. The hearing shall be as though the jurisdiction of the district court were original jurisdiction and all matters which were, or might have been, presented in the Commissioners' Court, and as well the validity of the Act under which the district is proposed to be created, and the regularity of all precedent proceedings, may be contested in the district court, and the court shall apply to the determination of such cause its full legal and equitable powers to the end that substantial justice may be done. The judgment of the district court may be appealed from as in other civil causes, and all such causes shall be given precedence on the docket of any higher court over all causes not of like public concern. The final judgment of the district court, or other court to which an appeal may be prosecuted, shall be certified and transmitted to the clerk of the Commissioners' Court together with all original documents and processes which were transmitted from the Commissioners' Court to the district court on appeal; The Commissioners' Court shall thereupon enter their order upon said petition to conform to the decree entered by the court of final jurisdiction, and shall enter

such other and further orders as may be by law required to execute the intent of the certified decree. (Acts 1925, 39th Leg., p. 89, ch. 25, sec. 18; Acts 1929, 41st Leg., p. 578, ch. 280, sec. 4.)

Art. 7880-19. Granting or refusing petition

If it shall appear on hearing by the commissioners' court that the organization of a district as prayed for is feasible and practicable, that it would be a benefit to the land to be included therein, and be a public benefit, or utility, the commissioners' court shall so find and grant the petition. If the court should find that such proposed district is not feasible or practicable, would not be a public benefit or utility, or would not be a benefit to the land to be included therein, or is not needed, the court shall refuse to grant the petition. (Acts 1925, 39th Leg., p. 90, ch. 25, sec. 19; Acts 1927, 40th Leg., 1st C. S., p. 496, ch. 107, sec 4.)

* * * * * * * *

Art. 7880-20. Appointment of directors

When the commissioners' court shall grant a petition for organization of a district it shall appoint five directors who shall serve until their successors are elected or appointed in accordance with law. Such directors shall within fifteen days thereafter file their official bonds in the office of the county clerk who shall present same to the county judge for approval. The county judge shall pass upon such bonds and approve same if proper and sufficient, or disapprove same and endorse his action thereon and return same to the county clerk. If approved, said bonds shall be recorded in a record kept for that purpose in the office of the county clerk. If such bond is not approved a new bond may be furnished in ten days thereafter. If any director so appointed fails to qualify, the

commissioners' court shall appoint other persons in place of those failing to qualify. Each of said directors shall take the oath of office as herein provided. (Acts 1925, 39th Leg., ch. 25, p. 90, sec. 20.)

* * * * * * * *

Art. 7880-23. Election; ballot

Whenever a district shall have been organized by the granting of a petition therefor by the commissioners' court or by the State Board of Water Engineers, and the directors shall have qualified by giving bond and taking the oath of office, the directors shall meet, elect a president, vice-president and secretary and enter upon the discharge of their duties.

Before such district shall incur any indebtedness other than for its operation and the holding of an election, and in any event within thirty days after the date of their first meeting they shall make and publish an order calling an election within and for such district for the purpose of confirming the organization of the district by a vote of the qualified resident property taxpaying voters. The ballots for such election shall contain the proposition: "For confirmation of district" and "Against district."

The election shall be held as herein provided for other elections. At the same time and the same election the proposition for issuance of preliminary bonds may be submitted. (Acts 1925, 39th Leg., ch. 25, p. 91, sec. 23.)

Art. 7880-24. Confirmation of organization

If the majority of those voting at such election vote in favor of the confirmation of the district the same is thereby finally confirmed and ratified. If a majority of those voting at such election vote against the district, same shall have no further authority except that any debts incurred

shall be paid and the organization shall be maintained until all such debts are paid.

Whenever such an election shall be found to be in favor of the confirmation of the district and the result thereof be declared the board of directors shall make and enter in their minutes an order substantially as follows:

An election having been held in ..... district on the ..... day of ..... for the purpose of voting upon the confirmation of the organization resulted in a vote of ..... votes for confirmation and ..... votes against the district, the result being declared in favor of the organization. Said ..... district is therefore declared to have been legally organized with the following boundaries:—(Set out boundaries).

Said order shall be signed by said directors or a majority of them and acknowledged by the president and be filed for record in the office of the county clerk of the county or counties in which same is situated and shall be recorded in the deed records. (Acts 1925, 39th Leg., ch. 25, p. 91, sec. 24.)

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Art. 7880-25a. Attorney General to contest creation of district.

It is the intent hereof that Sections 18 and 19 of this Act, and all amendments thereto now effective, or hereafter to be adopted, shall afford all interested persons adequate and exclusive opportunity to protest the creation of a district, and thereafter, save as hereinafter provided, no suit shall be permitted to be instituted in any court of this State contesting the validity of the formation and boundaries of a district created hereunder, or contesting any bonds or other obligations created hereunder, or contesting the validity of a contract with the United States,

or of the authorization thereof by the district; It is expressly provided, however, that all such matters may be judicially inquired into and determined in any suit brought by the State of Texas, through the Attorney General, upon his own motion, or upon the motion of any person affected by the existence or plans of the district, upon good cause shown, except in such cases as are, or may be, provided by other provisions of this Act, or by the Constitution of Texas. (Acts 1925, 39th Leg., p. 86, ch. 25, sec. 25a, as added Acts 1929, 41st Leg., p. 578, ch. 280, sec. 6).

Art. 7880-26. Conduct of election

All elections held by a district shall be ordered, held and conducted in accordance with the laws of this State for the holding of general elections for State and county officers, except as herein otherwise provided. (Acts 1925, 39th Leg., ch. 25, p. 92, sec. 26.)

Art. 7880-27. Polling places; judges; clerks

The directors shall name the polling places and if more than one is required divide the district into election precincts. Same may be changed from time to time as required. The directors shall provide for the holding of all elections and giving of notice thereof and appoint the officers to hold same. The officers shall consist of one presiding judge, one assistant judge and two clerks. More clerks may be appointed when necessary. Officers shall be appointed for such election when it is ordered. (Acts 1925, 39th Leg., ch. 25, p. 92, sec. 27.)

Art. 7880-28. Notice of election

Notice of all elections shall be given by order of the board of directors. The notice shall state the purpose of the election, the propositions and officers to be voted up-

on, the polling places, the names of the officers of election. The notice shall be signed by the president and secretary and shall be published once a week for three consecutive weeks in a newspaper of general circulation published in the county or counties in which such district is located, or if none is published in said counties in the nearest county thereto. The first publication shall be at least twenty one days prior to the election and not more than thirty-five days prior thereto. (Acts 1925, 39th Leg., ch. 25, p. 92, sec. 28.)

Art. 7880-29. Declaring result of election

The officers holding the election shall make and deliver the returns thereof in triplicate, one being retained by the presiding judge, one delivered to the president of the district and one delivered to the secretary. The ballot boxes and other election records and supplies shall be delivered to the secretary at the office of the district and be preserved as provided by law in said office. All boxes containing ballots voted or mutilated shall be preserved for one year subject to the orders of any court in which a contest thereof may be filed. The officers of election at the time of making and sealing such election returns shall give to the newspapers or others calling for same the result of such election in their voting box. The directors shall meet and canvass the returns of an election at any time not less than five full days thereafter nor more than seven days thereafter, provided if same cannot be canvassed within seven days same shall be done as soon thereafter as possible. (Acts 195, 39th Leg., ch. 25, p. 93, sec. 29.)

Art. 7880-30. Voter's oath

When any person appears at the polls to vote who is not known to the election officers to be a qualified

voter and a property tax payer, or when his vote is challenged, he shall be required to subscribe and swear to an oath as follows: "I do solemnly swear (or affirm) that I am a qualified voter and a property tax payer in the district. I did not acquire property prior to this election for the purpose of voting, but am a *bona fide* property tax payer in the district." Such oath shall be required only in elections in which the voter is required to be a property tax payer. (Acts 1925, 39th Leg., ch. 25, p. 93, sec. 30.)

Art. 7880-31. Preliminary bonds

The directors of the district shall have full authority to make investigations and plans necessary to the operation of the district and the construction of plants and improvements. They may employ engineers, attorneys, bond experts, and other agents and employees required to aid them in the performance of such duties. The district may issue bonds to be known and designated as preliminary bonds, for the purpose of creating a fund to pay the costs of organization of the district and of making surveys, investigations, attorneys fees, engineering work, cost of issuance of bonds, and all other costs and expenses incident to the organization of the district and its operation in investigating and determining upon plans for its plant and improvements and the expense of issuing and selling bonds to provide for such permanent improvements.

The directors shall make an estimate of such expenses and state in the notice of election the amount of same. Said proposition of the issuance of such bonds shall be submitted to an election and shall be adopted. Those voting at such election shall be qualified electors and property tax payers. Such preliminary bonds shall bear

interest at a rate not to exceed six per cent per annum and shall be due and payable not to exceed ten years from their date. While said bonds shall be known and designated on the records as preliminary bonds it shall not be necessary to so designate same on the bonds. (Acts 1925, 39th Leg., ch. 25, p. 93, sec. 31.)

Art. 7880-32. Provision for payment

Said bond election may be held at the same time as the election held for the conformation of the district, or at such time thereafter as the directors shall provide. When such bonds have been authorized by an election the directors may make an order for the issuance thereof in an amount not to exceed the amount stated in the notice of election. Said bonds may be made payable serially or upon amortization at any time within ten years from their date. At the time such bonds are issued a tax shall be levied sufficient to pay the interest thereon and provide for the payment of the principal thereof as same mature and to pay the cost of assessing and collecting such taxes.

If such tax levied is based upon the assessed value obtained from the county tax rolls, or the tax rolls of such district for the preceding year and new tax rolls be approved before the time for collection of taxes, the board of directors is authorized to change the tax rate so made at the time of the issuance of said bonds, provided that the new tax rate shall be sufficient when applied to the new assessed value to raise the same amount of money as the rate levied at the time when the bonds were issued would have raised upon the valuation taken into consideration in fixing such rate. (Acts 1925, 39th Leg., p. 94, ch. 25, sec. 32; Acts 1927, 40th Leg., 1st C. S., p. 496, ch. 107, sec. 5.)

Art. 7880-32a. Loans by directors, pledge of taxes

The directors of the district shall have power to declare an existing emergency in the matters of funds not being available to meet lawfully authorized obligations of the district, and to borrow money upon notes of the district to meet such obligations at any rate not to exceed eight per centum per annum: To secure such loans the directors of the district may pledge any tax then levied but not collected by the district, up to eighty-five per cent of the same, or to pledge as collateral any bonds of the district then authorized, but not sold, provided however:

1st: In case of the pledge of taxes levied, such loan shall not mature later than April 1st next after such loan may be consummated:

2nd: In case of the proposed pledge of either preliminary or construction bonds, authorized but not sold, the maturity of the loan shall not be on a day later than six months next after the date of the emergency loan, and such loan shall not exceed a sum in excess of twenty-five per centum of the bonds then unsold. Further, it is provided that where bonds are pledged as collateral for an emergency loan hereunder that the par value of the bonds so pledged shall not exceed the amount of the loan by more than Ten per centum of the amount of such loan:

3rd: In either case no money procured upon any such loan can be applied to a purpose other than the designated purposes for which any such tax may have been levied, or for which any such bonds may have been authorized. (Acts 1925, 39th Leg., p. 86, ch. 25, sec. 32a, as added Acts 1929, 41st Leg., p. 578, ch. 280, sec. 7.)

Art. 7880-33. Levy of taxes

Instead of proceeding for the assessment, equalization and collection of taxes in the manner elsewhere in this Act provided for, the directors of the district may provide therefor by contracts for such service, with the Commissioners' Court of each county in which property taxable by the district is situated; subject, however, to the further conditions that:

1. The consideration for such service shall be computable as fees of office of the county officers rendering service under such contracts: 2. The service charge to be paid by the district may not exceed the reasonable cost which will be added to the county's cost to assess and collect taxes, were no such contract made, and where such service may be accomplished by an extension of an *ad valorem* tax levy by the district upon the rolls to be used for the State and county taxes, such cost shall not, in any event, exceed Eighteen Hundred Dollars ($1800.00) per year for the assessment and equalization of taxes, and not to exceed Fifteen Hundred Dollars ($1500.00) per year for the collection of and accounting for taxes, together with such other acts as are lawful duties incident to delinquent taxes: 3. The tax collecting official shall be deemed to be, as to tax money collected for the district, the Tax Collector of the district and he, as such collector, may be required by the district to give a surety company bond, payable to the district; provided that, if a surety company bond is required, the premium on any such bond shall be paid by the district; however, in the absence of such separate bond, the official bond of the county's tax collector shall ratably inure to the benefit of the district.

Upon the making of any such contract the Tax Assessor and Tax Collector or the Tax Assessor and

Collector for the given county shall be required to perform for the contracting district, all and singular, the same duties which they lawfully are required to perform concerning taxes of the State and county, upon condition however, that the board of directors of the contracting district, before requiring service under the contract, shall levy its *ad valorem* tax, or fix its specific assessment of benefits, or its tax per acre (to conform to the plan of taxation adopted by the district) for each year during which service is desired under the contract; and, in such time as will not delay preparation of the county's tax rolls, deliver to the county's tax assessing officer a certificate showing the rate (or amount, as the same may require) of the district's tax levy or specific assessment for the current taxing year. The tax collector shall have the duty to pay to the district, or its official depository bank for its account, all money collected by him for the district during any calendar month, and furnish to the district an itemized statement of the collections made in the prior month, on or before the fifteenth of the next succeeding month, unless the contract provides for more frequent accounting, as it may do. Any district contracting as hereby provided, may elect thereby to require that the county's auditor (if there be one) shall annually audit the collections and accountings of the tax collecting officer and furnish the district with a report of his findings, provided that such district shall pay to the county the actual cost of the audit, but in no event to exceed Five Hundred Dollars ($500.00).

A finance ledger shall be kept by the district in which shall be charged against the tax collector the full amount of the completed tax rolls, and credit for the amount of the taxes collected and paid over to the district shall be entered therein. (Acts 1925, 39th Leg., p.

94, ch. 25, sec. 33; Acts 1935, 44th Leg., p. 792, ch. 340, sec. 1.)

Art. 7880-34. Record of bonds

Whenever a district shall issue bonds other than preliminary bonds, before same are sold a record showing all proceedings of the organization of the district and of the issuance of bonds shall be filed in the office of the Attorney General of the State and it shall be the duty of the Attorney General to examine same and give his opinion thereon. Said record may be so presented to the Attorney General before such bonds are printed and executed after the record providing for the issuance of same is completed. When such record is approved said bonds shall be issued or duly executed and shall be submitted to the Attorney General for approval. If he shall find that same have been issued in accordance with the provisions of law and that such bonds are valid, binding obligations upon the district he shall so officially certify and execute a certificate thereof which shall be filed in the office of the State Comptroller and be recorded in a record kept for that purpose. Such bonds after being approved and registered shall be held in any suit or proceeding in which their validity may be questioned to be valid, binding obligations of such district, provided, however, that any party interested therein may file a suit thereon at any time prior to the registration of same by the State Comptroller, but not thereafter. Said bonds shall not be so registered in the office of the State Comptroller until twenty days after the date of the election authorizing the issuance thereof. (Acts 1925, 39th Leg., ch. 25, p. 95, sec. 34.)

Art. 7880-35. District depository

Prior to the sale of any bonds the directors of the district shall select and name a depository for the district as herein provided and the proceeds of such bonds shall be paid into the depository and disbursed as herein provided. (Acts 1925, 39th Leg., ch. 25, p. 95, sec. 35.)

Art 7880-36. Qualifications and powers of directors

Each district shall have five directors. Each director shall be twenty-one years or more of age, be a resident citizen of the State and own land subject to taxation in the district. The five directors shall compose the board of directors of the district and be the managing officers in charge of all the business and affairs of the district, make all contracts pertaining thereto. They shall employ all employees necessary for the proper handling of such business and the operation of the district, its plant and improvements. They may employ a general manager, attorneys, bookkeepers, engineers and laborers. They may purchase all necessary work animals, motors, automobiles, machinery, materials and supplies, required in the erection, repair or maintenance of the plant and improvements of the district. A director may be employed as general manager and at such compensation as may be fixed by the four other directors, and when so employed he shall continue to perform the duties of a director. (Acts 1925, 39th Leg., ch. 25, p. 95, sec. 36.)

Art. 7880-37. Election of directors

There shall be held a general election in said water control and improvement district on the second Tuesday in January next after the said district is formed at which time five directors for each district shall be elected. The three directors receiving the highest vote shall serve

for two years. The other two directors shall serve for one year. At the second annual election two directors shall be elected to serve two years. At the third annual election three directors shall be elected to serve two years, and thereafter there shall be an annual election of two directors in one year and three directors in the next year in continuing sequence. (Acts 1925, 39th Leg., p. 95, ch. 25, sec. 37; Acts 1927, 40th Leg., 1st C. S., p. 496, ch. 107, sec. 6.)

Art. 7880-38. Vacancies

All vacancies in the office of director and other offices shall be filled by appointment by the board of directors for the unexpired term. In the event the number of directors shall be reduced to less than three then the remaining director or directors shall call a special election to fill said vacancies, and if they shall fail to do so within fifteen days after such vacancies occur the judge of any district court within the jurisdiction of which any part of such district may be situated, upon petition of any voter or creditor thereof may order the holding of such election, fixing the date thereof, and order the publication of notice thereof by any county sheriff and name the officers to hold such election. In any such election held by order of a district judge the returns of an election shall be made to and filed in the office of the clerk of the court and he shall declare the result thereof. The officers elected shall furnish bond and qualify in the manner provided herein with reference to directors first appointed for a district upon its organization. (Acts 1925, 9th Leg., ch. 25, p. 96, sec. 38).

Art. 7880-39. Directors; bond; oath

The directors of a district shall each make and furnish a good and sufficient bond in the sum of five thou-

sand dollars, payable to the district, conditioned upon the faithful performance of their duties as such directors. They shall each take and subscribe an oath of office with conditions therein as provided by law for members of the county commissioners' court. After the organization of a district as herein provided and the qualification of the first board of directors all such bonds required to be given by a director or other officer of a district shall be approved by the director of the district. All such bonds shall be filed for record in the office of the county clerk of the county in which the director lives and shall then be recorded in a record kept for that purpose in the office of the district and be filed for safe keeping in the depository of the district. (Acts 1925, 39th Leg., ch. 25, p. 96, sec. 39.)

Art. 7880-40. Officers and employees; bond

The directors of a district shall require all officers and employees who shall be charged with the collection or paying or handling of any funds of the district under their orders to furnish good and sufficient bonds payable to the district, conditioned upon the faithful performance of their duties and accounting for all funds and property of the district coming into their hands in a sufficient sum to safeguard the district. (Acts 1925, 39th Leg., ch. 25, p. 96, sec. 40.)

Art. 7880-41. Directors; quorum; warrants

The directors of a district shall organize by electing one of their members president, one vice president and one secretary. Three directors shall constitute a quorum at any meeting, and a concurrence of three shall be sufficient in all matters pertaining to the business of the district except the letting of construction contracts and the

drawing of warrants on the depository paying therefor, which shall require the concurrence and signature of four directors. Warrants to pay current expenses, salaries and accounts may be drawn and signed by an officer or employee, designated by standing order entered on their minutes, when such accounts have been contracted and ordered paid by the directors. (Acts 1925, 39th Leg., ch. 25, p. 96, sec. 41.)

Art. 7880-42. Organization of directors

The president shall preside at all meetings of the board and shall be the chief executive officer of the district. The vice president shall act as president in case of the absence or disability of the president. The secretary shall act as secretary of the board of directors and shall be charged with the duty of seeing that all records and books of the district are properly kept. In the case of the absence or inability of the secretary to act, a secretary *pro tem* shall be selected by the directors. The directors shall hold regular meetings at the office of the district on the first Monday in February, May, August and November of each year at 10 o'clock a. m., and may hold meetings at such other times as the business of the district may require. Any person owning taxable property in the district may attend any meeting of the directors and may present such matters as they desire to such directors in an orderly manner. (Acts 1925, 39th Leg., ch. 25, p. 97, sec. 42.)

Art. 7880-43. Fees of directors

The directors shall receive as fees of office the sum of not to exceed Ten Dollars per day for each day of service necessary to discharge of their duties. They shall file with the secretary a verified statement showing the

actual number of days of service each month on the last day of the month, or as soon thereafter as possible and before a warrant shall be issued therefor. (Acts 1925, 39th Leg., ch. 25, p. 97, sec. 43.)

Art. 7880-44. Minutes; office

The directors shall keep a true and full account of all their meetings and proceedings and preserve their minutes, contracts, records, notices, accounts, receipts, and records of all kinds in a fireproof vault or safe. The same shall be the property of the district and subject to public inspection. A regular office shall be established and maintained for conduct of the district business within the district, provided that when a district is organized in such a manner that the towns within or adjoining the territory included therein are left out of the district, the district office may be located in such adjoining town which is best suited for the transaction of the business. (Acts 1925, 39th Leg., ch. 25, p. 97, sec. 44.)

Art. 7880-45. Auditor's report

A complete system of accounts shall be kept by the district and any district so electing, in lieu of having audit of its affairs by one or more County Auditors, may provide for either monthly, quarterly or semi-annual audit of its affairs by an independent public accountant of recognized integrity and ability, and the audits shall conform to January 1st as the end of the fiscal year for the district; and, any district failing to procure audits in January and July of each year shall be subject to audit, and payment of the actual cost of such audit, for the omitted period, by the county auditor of the county in which the district's principal office is situated, the cost of such audit to be determined by the Commissioners' Court of the par-

ticular county and paid by the district. Each report of audit shall be in duplicate, one of which shall be filed in the district's office and one filed in the office of the auditor, where they shall constitute public records, open to inspection by any interested person. (Acts 1925, 39th Leg., p. 97, ch. 25, sec. 45; Acts 1935, 44th Leg., p. 792, ch. 340, sec. 2.)

Art. 7880-46. General manager

The directors may employ a general manager for the district and may give him full authority in the management and operation of the district affairs, (subject only to the orders of the board of directors). The term of office and compensation to be paid such manager and all employees shall be by the board of directors and all employees may be removed by the board. (Acts 1925, 39th Leg., ch. 25, p. 98, sec. 46.)

Art. 7880-47. Officers and employees; bonds

All bonds required to be given by officers and employees of the district may be signed by individual sureties or by surety companies authorized to do business in the State. (Acts 1925, 39th Leg., ch. 25, p. 98, sec. 47.)

Art. 7880-48. Powers of district

All districts shall have full power and authority to construct all plants, works, and improvements necessary to the purpose for which it is organized and incident thereto. Water control and improvement districts may construct all works and improvements necessary for the prevention of floods, the irrigation of land in such districts, for drainage of lands and construction of levees to protect same from overflow, to alter land elevations where correction is needed, and to supply water for municipal

uses, domestic uses, power and commercial purposes, and all other beneficial uses or controls. (Acts 1925, 39th Leg., p. 98, ch. 25, sec. 48; Acts 1927, 40th Leg., 1st C. S., p. 496, ch. 107, sec. 7.)

Art. 7880-49. Entry on lands

The directors, employees and engineers of a district shall have authority to go upon any lands for the purpose of making surveys for reservoirs, canals, rights of way, dams, or other contemplated improvements and to attend to any business of the district, whether such lands are situated in the district or outside of such district. (Acts 1925, 39th Leg., ch. 25, p. 98, sec. 49.)

Art. 7880-50. Liability on contracts of acquired irrigation system

When a district acquires an established irrigation system which has contracted to supply water to others and the holders of such contracts or the lands entitled to service of water thereon are not within such district, such contracts and duties shall be carried out by the district in the same manner and to the same extent that any other purchaser of such system would be bound thereby. (Acts 1925, 39th Leg., ch. 25, p. 98, sec. 50.)

Art. 7880-51. Right to sue or be sued

All districts can sue and be sued in any and all courts of this State in the name of the district. All courts shall take judicial knowledge and notice of the establishment of a district and the boundaries thereof. Such districts shall contract and be contracted with in the name of the district. (Acts 1925, 39th Leg., ch. 25, p. 98, sec. 51.)

Art. 7880-52. District engineer

The directors may employ a competent civil engineer who shall be an officer of the district to be known as "District Engineer". It shall be his duty to make a thorough study and investigation of all plans of the district and to make and file in the office of the district a report upon all plans for construction of plants and improvements. Each district shall provide and keep in its office a book to be known as the "Engineer's Record" in which shall be recorded all reports and recommendations made by the engineer and same shall be open to public inspection. No contract involving the expenditure of more than twenty thousand dollars shall be made by a district unless such district shall have a district engineer who has made a proper study and report thereon. The term of service of such engineer shall be fixed by the board of directors. (Acts 1925, 39th Leg., ch. 25, p. 98, sec. 52.)

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Art. 7880-54. Tax assessor and collector

The office of Tax Assessor and Collector is one office to be filled by one person. He shall be appointed by the board of directors, of if the directors so order may be elected. He shall give good and sufficient bond with at least two sufficient sureties or a surety company, to be approved by the directors, in the sum of Five Thousand ($5,000.00) Dollars, conditioned for the faithful performance of his duties as Tax Assessor and Collector and for the paying over to the depository all funds or other things of value coming into his hands as such officer. The directors may require additional bonds or a bond in larger amount or additional security at any time that same may be advisable in their judgment. One or more deputies may be appointed by the directors to assist the Tax Asses-

sor and Collector for such time, not to exceed one year, as may be ordered by the directors, and such assistants may be required to furnish bonds with similar conditions to that required of the Tax Assessor and Collector. The compensation to be paid to the Tax Assessor and Collector and any deputy shall be fixed by the directors. The Board of Directors may require the Tax Assessor and Collector to perform other duties than those herein fixed. In case any district is appointed fiscal agent of the United States, or by the United States is authorized to make collections of money for and on behalf of the United States in connection with any Federal Reclamation project, such Tax Assessor and Collector and each director and officer of the district shall execute a further additional bond in such sum as the Secretary of the Interior may require, conditioned for the faithful discharge of his respective office and the faithful discharge by the district of its duties as fiscal or other agent of the United States under such appointment or authorization. Such additional bonds to be approved, recorded and filed as herein provided for other official bonds. Any such additional bonds may be sued on by the United States or any person injured by the failure of such officer or the district to fully, promptly and completely perform their respective duties. (Acts 1925, 39th Leg., p. 100, ch. 25, sec. 54; Acts 1931, 42nd Leg., p. 794, ch. 321, sec. 2.)

Art. 7880-55. Property subject to taxation

The tax assessor and collector shall make an assessment of all the taxable property in his district. The property subject to taxation in a district shall be determined by and governed by the laws of this State providing for taxation for State and county purposes, and all such laws of the State shall apply thereto except as here-

in otherwise provided. (Acts 1925, 39th Leg., ch. 25, p. 101, sec. 55.)

Art. 7880-56. Rendition of taxable property

The tax assessor and collector shall compile a record of all tax payers and those subject to payment of taxes in the district, and of all taxable property and the name and postoffice address of the owner thereof. He shall on or before the first day of April each year furnish each taxpayer and each owner of taxable property in the district a blank form for the rendition of property for taxation. Same may be delivered or deposited in the mails addressed to such owner. It shall be the duty of the owner of any and all property subject to taxation in the district to file in the office of the tax assessor and collector a full, accurate and complete statement made under oath of all property owned by him, her, it or them, subject to taxation therein. Said statement or rendition shall be filed on or before the last day of March of each year and shall state the true value of all property listed and owned by the party rendering same subject to taxation in the district. In rendering land improvements and all other character of physical, real and personal property such statement shall show both the market value and the real value thereof. (Acts 1925, 39th Leg., ch. 25, p. 101, sec. 56.)

Art. 7880-57. Taxpayer's oath

Anyone, any corporation, any organization, partnership, association, joint stock company, or property owner of any description who shall refuse to make or file as herein provided a true, full and complete statement and rendition under oath of all property owned subject to taxation in the district, shall thereby be precluded from mak-

ing any objection, protest, or contest against the assessment made against him, her, it, or them for taxes by the district. Such statement or rendition shall have thereon, or attached thereto, an oath substantially as follows:

"I, _____, upon my oath state that the foregoing statement and rendition is a true, full and complete statement of all property owned by me or for whom this rendition is made, or by whom this rendition is made, subject to taxation within _____ district. I have correctly stated the description, location and value thereof and of each item thereof."

Same shall be signed and oath made before any officer authorized by the laws of this State to take oaths and acknowledgments. Such officer shall place thereon his official certificate, in substance as follows:

"Subscribed and sworn to by _____ before me this the _____ day of _____, _____" and attach thereto his official seal and signature.

Such statement may be filed by any authorized agent of the owner of any such property, provided such agent shall state therein that he makes and files same as such agent. (Acts 1925, 39th Leg., ch. 25, p. 101, sec. 57.)

Art. 7880-58. Verification by tax assesor and collector

The tax assessor and collector shall check, investigate and verify each such rendition of property and note thereon in writing his report thereof. He shall add in such report any property omitted therefrom and make statement of his estimate of the value of all property not rendered at its full value or if same is rendered at more than its full value. He shall make and file a rendition of all property in the district which is not rendered for taxation. Such rendition by such officer to be made and

filed on or before the first day of June of each year, or as soon thereafter as possible. The provisions hereof that the tax assessor and collector shall furnish a form for such renditions to be made by property owners shall not excuse anyone failing to receive same from the duty of making and filing same, but any property owner failing to receive same shall call at the office for same. In making rendition of all property not rendered the tax assessor and collector shall include all property of every description which is not rendered by the owner thereof, or by his agent for him, and if the owner thereof is unknown, shall list same as owned by an "unknown owner" and said property shall be taxed and taxes collected thereon even though the owner be unknown or be assessed against one not the owner thereof. (Acts 1925, 39th Leg., ch. 25, p. 102, sec. 58.)

Art. 7880-59. False oaths

The tax assessor and collector shall have authority to administer oaths to fully carry out his duties and the assessment of property for taxation. All laws and penal statutes of this State providing the rendition of property for State and county purposes and providing penalties for making false oaths and providing penalties for failing to render such property shall apply to the rendition of property for taxation in a district except as herein otherwise provided. (Acts 1925, 39th Leg., ch. 25, p. 102, sec. 59.)

Art. 7880-60. Date of rendition

If upon the organization of a district it shall become necessary to have the property therein rendered for taxation at a later date in the year than herein provided for the regular assessment thereof, then the directors of such district shall fix and determine the time when such ren-

ditions shall be made and the time within which the other necessary things herein provided to be done in connection therewith shall be done. After said first year, however, said assessments shall be made as herein provided. (Acts 1925, 39th Leg., ch. 25, p. 102, sec. 60.)

Art. 7880-61. Board of equalization

The directors for such district created under the provisions of this Act, shall at their first meeting, or as soon thereafter as practicable, and annually thereafter, appoint three commissioners, each being a qualified voter and resident property owner of said district, who shall be styled the "Board of Equalization," and at the same meeting the board of directors shall fix the time for the meeting of such board of equalization for the first year; and said board of equalization shall convene at the time fixed by the directors to receive all assessment lists or books of the assessor for such district for examination, correction, equalization, appraisement and approval, and at all meetings of said board the secretary of the board of directors shall act as secretary thereof and keep a permanent record of all the proceedings of the board of equalization. (Acts 1925, 39th Leg., ch. 25, p. 102, sec. 61.)

Art. 7880-62. Oath of board

Before entering upon the duties as such board of equalization, each of the members thereof shall take and subscribe the following oath: "I..... do solemnly swear (or affirm) that I will to the best of my ability, make a full and complete examination, correction, equalization and appraisement of all property contained within said district as shown by the assessment lists or books of the assessor for said district and add thereto all property not included therein of which I have knowledge,"

and said oath shall be spread upon the minutes to be kept by the secretary of said board. (Acts 1925, 39th Leg., ch. 25, p. 103, sec. 62.)

Art. 7880-63. Board to convene

The Board of Equalization, after the first year, shall convene on the first Monday in June of each year and shall complete their work by the first day of September, or as soon thereafter as possible. (Acts 1925, 39th Leg., ch. 25, p. 103, sec. 63.)

Art. 7880-64. Board to examine assessment lists

The board of equalization herein provided for shall cause the assessor to bring before them, at the time fixed for the conveying of said board, all the assessment lists or books of the assessor of said district for their examination, that they may see that each and every person has rendered his property at its full value; and said board shall have power to send for persons and papers, to administer oaths to persons who testify before the board, to ascertain the value of all property subject to taxation. They may lower the valuation of all property rendered or raise the valuation thereof. The board shall have power to correct any and all errors of assessments and renditions and to cause all property not rendered to be placed on the tax rolls.

The board of equalization shall equalize as near as possible the value of all property rendered for taxation and fix the value thereof for taxation. (Acts 1925, 39th Leg., ch. 25, p. 103, sec. 64.)

Art. 7880-65. May file complaint

Any person may file with the board of equalization a complaint as to the rendition and assessment of his own

property, or any other property, and the board shall hear and consider all such complaints. Anyone may file with the board suggestions of property being omitted from the tax rolls and the board shall add to the rolls any property subject to taxation omitted from same. The tax assessor and collector shall file with the board a list of all persons who fail or refuse to render their property. (Acts 1925, 39th Leg., ch. 25, p. 103, sec. 65.)

Art. 7880-66. Notice of hearing

When said board shall have passed upon such renditions they shall fix a date for hearing protests from those whose renditions have been raised. The secretary shall give notice in writing to all whose assessments have been raised, of the time and place of such hearing by depositing same with postage paid in the mails addressed to such party if his address is known. Failure to give such notice shall not relieve the owner of any such property of his duty to take notice of the meeting of the board of equalization and to appear at such meeting. Said notice shall be mailed at least ten days prior to such meeting. The board of equalization, at said meeting, shall hear and consider all complaints and protests and reconsider the valuation of all property the valuation of which has theretofore been raised by them and finally fix the valuation of all property. When the tax assessor and collector has made out his tax rolls, the board of equalization shall meet and consider same and make all necessary corrections therein and endorse their approval thereon. The action of the board of equalization at said last meeting approving said rolls shall be final and shall not be subject to revision by said board or in any other tribunal thereafter. The compensation of the members of the board shall be fixed by the directors of the district. (Acts 1925, 39th Leg., ch. 25, p. 103, sec. 66.)

Art. 7880-67. Duplicate tax rolls

The tax assessor and collector shall prepare the tax rolls in duplicate, one copy of which he shall retain in his office and one copy shall be filed in the district office. The minutes of the board of equalization, all renditions, protests and other papers filed in connection with the rendition of property and the preparation of the tax rolls shall be preserved as official records in the office of the district. (Acts 1925, 39th Leg., ch. 25, p. 104, sec. 67.)

Art. 7880-68. Books of account; audit

The directors of a district shall provide a permanent finance ledger in which the tax assessor and collector shall be charged with the total assessment of property as shown by the tax rolls. Credit shall be entered thereon of all collections paid to the depository. Said finance ledger and the books and accounts of the tax assessor and collector shall be audited by the board of directors semi-annually on January 1st and July 1st of each year and at such other times as the board may order. (Acts 1925, 39th Leg., ch. 25, p. 104, sec. 68.)

Art. 7880-69. When taxes due; payable

All taxes shall become due and payable on the first day of October of each year and shall be paid on or before the 31st day of January thereafter. (Acts 1925, 39th Leg., ch. 25, p. 104, sec. 69.)

Art. 7880-70. Delinquent taxes; collection; sale of property; limitation

All taxes which have not been paid on the last day of January shall become delinquent on the first day of February each year and same shall be and remain a lien upon the property for which same were assessed although the owner be unknown or same be listed in the name of a per-

son not the actual owner thereof or though the ownership be changed. All such property may be sold under a judgment of a court for all taxes, interest penalty and costs assessed against same at any time after such taxes become delinquent. The district shall have authority to file suits for the collection of taxes against any and all property assessed for taxes and if the owner be unknown such suit may be filed against an unknown owner and the property sold under the judgment of the court. Taxes are not barred by any law of limitation and no law providing for a period of limitation as to debts or actions shall apply to such taxes. (Acts 1925, 39th Leg., ch. 25, p. 104, sec. 70.)

Art. 7880-71. Penalty; interest

All taxes becoming delinquent shall have added thereto a penalty of ten per cent of the amount thereof, which charge shall accrue at the time same became delinquent. All such delinquent taxes shall bear interest at the rate of six per cent per annum from the date upon which they became delinquent. (Acts 1925, 39th Leg., ch. 25, p. 104, sec. 71.)

Art. 7880-72. Publication of delinquent tax roll

The tax assessor and collector shall on or before the first of April each year prepare a delinquent tax roll, showing all charges upon the tax rolls which have not been paid and file same with the directors of said district. The directors shall publish said delinquent tax list showing name of owner, description of the property, and total amount due, in a newspaper published in the county where said district or any part thereof is situated. Said notice shall be published once a week for two weeks. If no newspaper is published in the county said notice may be published in a newspaper outside of the county. There

shall be paid to the newspaper for publishing such notice a reasonable fee fixed by agreement, not to exceed, however, twenty cents for each rendition or each tract of land, allowing not to exceed three lines single column thereto. The publisher of such notice shall file in the office of the district a copy of each issue of the paper containing said notice with affidavit of publication attached thereto. The notice herein provided for to be made by publication is intended to be for the information of all taxpayers and shall not be, or be held to be, a requisite to the filing of any suit for the collection of taxes and such suits may be filed without publishing such notice. (Acts 1925, 39th Leg., ch. 25, p. 104, sec. 72.)

Art. 7880-73. Attorney to bring suit

The directors shall on or before the first day of April of each year employ an attorney to file suits for the collection of all delinquent taxes. Said attorney shall be entitled to a fee of ten per cent upon the amount of all delinquent taxes collected or paid after suit is filed and same shall be charged as costs of court and judgment recovered therefor together with said taxes and as part of same. Such suits shall be filed and tried as other civil suits. When the owner of the property against which the taxes are assessed is unknown, the suit may be filed as against an unknown owner and citation be published as provided by law with reference to State and county taxes. All tax suits shall be for the collection of the amount due and foreclosure of the lien on the property against which same are assessed and said property shall be sold under order of sale. All costs of suits shall be taxed therein. In the event more property is covered by such lien as fixed by the judgment than necessary to be sold to secure the amount due, same may be divided and sold in parcels as

may be necessary to collect the amount due. The officer executing any such order of sale shall make deeds to the purchaser thereof which shall be held to vest a good and perfect title in the purchaser subject to be impeached only for fraud. (Acts 1925, 39th Leg., ch. 25, p. 105, sec. 73.)

Art. 7880-74. Redemption of delinquent property

Any person may redeem any property delinquent for taxes at any time prior to the date of sale of same under a judgment by paying the taxes and all penalties, interest, attorneys' fees and court costs accrued thereon. (Acts 1925, 39th Leg., ch. 25, p. 105, sec. 74.)

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Art. 7880-77. Transfer of water rights to other lands

When there is included in a district lands having a water right from a source of supply acquired by such district, but which lands it is difficult or impracticable to irrigate, the said district may allow such water rights to be transferred to other lands adjacent to the district and may admit such other lands to the district upon an equal basis as to water service with the lands from which said water was transferred. (Acts 1925, 39th Leg., ch. 25, p. 106, sec. 77.)

Art. 7880-77a. Adoption of plan of taxation

All taxes to pay the cost of the organization of a district and pay off bonds for preliminary surveys and investigation; or, to provide funds for conducting such surveys, if no construction bonds are desired to be issued, shall be levied and collected on the *ad valorem* basis. After the directors of a district shall have adopted plans for the construction of a plant and improvements to carry out the purposes of the district, and after an election is held giving

authority to the district to issue construction bonds, and to levy a tax in payment therefor, as provided in Sections 78 to 91, inclusive, of said Chapter 25, as amended by Sections 11, to 16, inclusive of said Chapter 107, they shall hold a public hearing upon the following propositions, viz:

1st: Shall taxes to pay off construction bonds, and for maintenance, operation and administrative costs of the district be assessed, levied and collected upon the *ad valorem basis?*

2nd. Shall taxes for the stated purposes be assessed, levied and collected on the basis of the assessment of specific benefits, as is provided for in Section 132 of said Chapter 25?

3rd: Shall taxes for the stated purposes be assessed, levied and collected upon the basis of assessment of benefits at an equal sum per acre of land, as is provided in Section 133 of said Chapter 25?

4th: And, if the district be organized under Section 59 of Article 16 of the Constitution, then there may be heard the question, shall taxes for the stated purposes be assessed, levied and collected on the *ad valorem* basis as to some part of the total tax required, and upon the basis of the assessment of benefits as to some part of the total tax required, or as to some defined part of, or property within, the district, as is provided for by Section 130 and Section 132 of said Chapter 25, as amended by this Act? Notice of the time and place of hearing and of the exact proposition to be determined shall be published in one or more newspapers giving general circulation in the district once a week for two consecutive weeks: The first of said publications shall be not less than ten days prior to the time of hearing set out in said notice. At this hearing any person who is a taxpayer within the district

may appear and offer testimony to show what plan of taxation will most conduce to the equitable distribution of the tax to be imposed by the district. Said hearing may be adjourned from day to day until all qualified persons who present themselves have been heard. The Board shall adopt such plan of taxation as will, under the evidence and the district's plans, in their judgment, most conduce to the equitable distribution of the district's tax:

If the plan adopted by the Directors falls under the provisions of said Section 130, then the order to be entered by the Directors shall specify what proportion of the tax falls under each designated classification. The order of the Board adopting a plan of taxation shall be final, and cannot be reviewed or questioned in any court, save on the ground of fraud or palpable and arbitrary abuse of discretion.

If after having adopted a tax plan the Directors find that the best interests of the district, and the necessity to keep the districts' tax adequate and equitably distributed require a change in the tax plan they may give notice, hold a hearing and decide as in this Section provided. Nothing in this Section provided shall be held to alter the provisions of said Chapter 25 as to districts operating under contract with the United States of America, nor to alter or impair the provisions of Section 130 of said Chapter 25 as amended hereby, relating to taxes levied to provide local improvements in a defined area in a district, which improvements are peculiar to such defined area do not affect the district as a whole.

(a) It is specifically provided that nothing contained in this Section or in Section 130 of this Act shall alter, or impair the right of a district to make, establish and collect maintenance and operation charges for the service they render, and to levy and collect taxes to se-

cure funds to maintain, repair and operate all works and facilities, and to give and maintain proper service for the purposes of its organization, as is provided for in Sections 106, 107, 108, 109, 110, and 111 of said Chapter 25.

(b) All taxes or charges, or assessments, imposed by a district, as provided for by Sections 106, 107, 108 and 109 of said Chapter 25, for the maintenance and operation of works, facilities and services of such district, shall be and constitute a lien against the lands as to which such taxes, or charges, or assessments, have been established; and, no law applying to a limitation against actions for debt shall apply thereto; same shall not be barred by limitation. (Acts 1925, 39th Leg., p. 86, ch. 25, sec. 77a, as added Acts 1929, 41st Leg., p. 578, ch. 280, sec. 9.)

(b) All taxes or charges, or assessments, imposed by a district, as provided for by Sections 106, 107, 108 and 109 of said Chapter 25, for the maintenance and operation of works, facilities and services of such district, shall be and constitute a lien against the lands as to which such taxes, or charges, or assessments, have been established; and, no law applying to a limitation against actions for debt shall apply thereto; same shall not be barred by limitation. Re-enacted Acts 1939, 46th Leg., p. 710, sections 1, 2.

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Art. 7880-84a. Emergency loan; interim bonds.

Whenever bonds, other than preliminary bonds or notes, are voted by any water control and improvement district, or any water improvement district, the board of directors thereof shall have power to declare an existing emergency in the matter of funds not being available for engineering work, for the purchase of lands for rights-

of-way and/or reservoir sites, for construction work, for legal and other necessary expenses, and for such purposes may issue securities on the faith and credit of the district in the manner hereinafter stated, to-wit:

(1). The securities evidencing such emergency loan shall be known as "interim bonds". They shall mature not later than ten (10) years from date of issue, and shall be redeemable at any time prior to maturity as is hereinafter provided. The principal amount of such emergency loan shall not exceed twenty-five per cent (25%) of the principal amount of the bonds of the district which have been voted, but not sold; provided, however, that before the issuance of such bonds the board of directors of any district desiring to issue same may by resolution duly passed limit the issue to any amount less than twenty-five per cent (25%), and when such amount is determined and fixed by such resolution, no additional "interim bonds" may be issued and sold until all outstanding "interim bonds" have been paid in full.

(1). The securities evidencing such emergency loan shall be known as "interim bonds". They shall mature not later than five (5) years from date of issue, and shall be redeemable at any time prior to maturity as is hereinafter provided. The principal amount of such emergency loan shall not exceed ten per cent (10%) of the principal amount of the bonds of the district which have been voted, but not sold; provided, however, that before the issuance of such bonds the board of directors of any district desiring to issue same may by resolution duly passed limit the issue to any amount less than ten per cent (10%), and when such amount is determined and fixed by such resolution, no additional "interim bonds" may be issued and sold until all outstanding "interim bonds" have been paid in full.

Note: The next preceding section (1) was in effect when the construction bonds were voted, and the first section (1) went into effect on April 9, 1930.

(2) When the bonds of any such district, other than preliminary bonds, have been authorized by the necessary favorable vote of the qualified electors, the board of directors thereof may, in its discretion, authorize the issuance of such bonds in whole or in parcels, as the needs of the district may require, and such board shall, and it is hereby made its duty, levy and provide for the annual assessment and collection of taxes sufficient to pay principal and interest of bonds so authorized to be issued and sold. Such bonds may be authorized, and the taxes levied therefor, as aforesaid, and approved by the Attorney General and registered by the Comptroller of Public Accounts prior to the filing of the report of the State Board of Water Engineers provided for in Section 139, Chapter 25, Acts of 1925.

(3). As the "interim bonds" herein authorized, are issued and sold, it shall be the duty of the board of directors, by orders duly passed, to deposit in the district depository, bonds of said district that have been validated by the judgment of a court of competent jurisdiction, or, approved by the Attorney General and registered by the Comptroller of Public Accounts, as provided in Sub-Section 2, of this Act, and which said bonds shall be deposited in said depository to the credit of the "interest and sinking fund account" created for the payment of such "interim bonds"; provided, that the principal amount of bonds so deposited shall aggregate at least one hundred and ten per centum (110%) of the principal sum of the series of "interim bonds" to secure payment of which the said bonds are deposited.

(4). The interest rate on the "interim bonds" shall not exceed the interest rate on the bonds deposited to secure their payment. Such "interim bonds" may be sold in the same manner and on the same terms provided by law for the sale of other bonds of any such district; and such "interim bonds" shall be issued in the name of the district, signed by the president and attested by the secretary, with the seal of the district affixed thereto, and may be issued in such denominations as may be determined by the board of directors, and shall be approved by the Attorney General and registered by the Comptroller of Public Accounts in the same manner as hereinabove provided for the approval and registration of improvement bonds of such district; provided, when "interim bonds" are sold at less than par value and accrued interest, the improvement bonds issued by such district must be sold at an increase over the rice authorized by law in a sum sufficient to equal the discount allowed on the interim bonds.

(5). To secure the loan evidenced by such "interim bonds" the board of directors shall appropriate the tax levied for the payment of the bonds deposited to the credit of the "interest and sinking fund account" of such "interim bonds", or so much of such tax as may be necessary for that purpose, and the proceeds of such tax, when collected, shall be devoted exclusively to the payment of the principal and interest of such "interim bonds"; provided, however, that nothing in this Act shall be construed as prohibiting the sale of any bonds of the district deposited to the credit of the "interest and sinking fund account" of the "interim bonds", or any other bonds of such district, but in event of the sale of any such bonds it is hereby made the duty of the district depository to apply the proceeds of any such sale, first, to the payment

of the principal and accrued interest of all such "interim bonds", and the remainder to the purpose or purposes for which any such bonds may have been authorized; and, provided, further, that in the event none of the bonds of the district shall have been sold at the time of the maturity of any installment of the principal or interest on the "interim bonds", it shall be the duty of the depository to cancel bonds so deposited, and annexed interest coupons, equal in amount to the principal and interest of any such "interim bonds" so paid off and discharged.

(6). Said "interim bonds" shall be redeemable, at the option of the board of directors of said district, at any time or times prior to maturity, upon payment by the district of principal and interest accrued to date fixed for redemption by said board, and whenever any such "interim bonds" are called in for redemption before maturity, notice thereof in writing shall be given to the bank or banking house named as the place of payment in such bonds, or to its successors or assigns, by the secretary of the board of directors of the district. The secretary shall designate in such notice the bond or bonds so called for redemption and payment, setting forth the number or numbers thereof, and the date fixed for the redemption thereof, which date shall be not more than sixty (60) days after the date notice of call for payment is made. In event any of such "interim bonds" so called for redemption are not presented, the same shall cease to bear interest from and after the date so fixed for redemption.

(7). All interim bonds heretofore issued and sold under authority of Chapter 25, as amended by Chapter 82, Section 84-a, of the General Laws passed by the First Called Session of the Forty-five Legislature, must be refunded or paid in full before additional bonds may be issued and sold. (Acts 1925, 39th Leg., p. 86, ch. 25, sec.

84a, as added Acts 1929, 41st Leg., 1st C. S., p. 205, ch. 82, sec. 1, as amended Acts 1930, 41st Leg., 5th C. S., p. 163, ch. 31.)

Art. 7880-85. Limitation of indebtedness; form of ballot; additional bonds

The board of directors of any district which has been or shall be organized under the provisions of Section 59 of Article 16 of the Constitution, may, for the benefit of the purchasers, or holders, of bonds to be issued or sold, limit the power of the district to incur debt or issue bonds in the manner and to the extent hereinafter provided. Said board may adopt a resolution declaring that during a period of not exceeding fifteen years the district shall not issue bonds in excess of twenty-five per cent of the assessed value of the taxable real property of the district according to the last assessment for district purposes, or not in excess of a fixed sum, or only for certain named purposes, and shall give notice of the adoption of such resolution by publication once a week for two consecutive weeks in a newspaper having general circulation in the district, stating that such resolutions shall take effect unless a petition signed by twenty per cent of the qualified tax paying electors of the district shall be presented against the proposed limitation within twenty days after the date of the first publication of such notice. If such petition or remonstrance be filed within said period, such limitation shall not take effect unless it is approved at an election held in the district. The ballot on the question at such election shall be substantially in the following form: "For limiting during the term of ....years, the maximum debt of the district to....," and "Against limiting during the term of ....years, the maximum debt of the district to....." The blank space therein shall be properly filled in to show the purpose of the election.

If such limitation shall be approved, or if during said period no petition or remonstrance shall be filed the district shall not issue bonds under any statute or constitutional provision during said term in excess of the amount so limited, except for the necessary repair of or to complete works for construction of which bonds may be issued within each limitation, and shall only issue bonds exceeding such limitation for said purpose after the State Board of Water Engineers shall have approved same and the plans and specifications for same, with the estimate of the cost thereof. If such plans and specifications and estimate be approved by said State Board of Water Engineers, notice of intention to issue such bonds, stating the purpose thereof, shall be given by publication once a week for three consecutive weeks in a newspaper having general circulation in the district, stating the amount of the proposed issue of bonds and the time a hearing will be had, which time shall not be less than thirty days from the first publication. Any tax payer, bondholder, or other person interested may appear and shall be heard.

Said hearing to be held by the board of directors of the district. If the determination be in favor of the issuance of such additional bonds for the amount and for the purpose stated in the notice, the question of issuing such bonds shall be submitted to the property tax paying voters at an election held in the form and manner provided by law. Only resident voters who are property tax payers shall vote at such election as provided by the provisions of the Constitution. (Acts 1925, 39th Leg., p. 108, ch. 25, sec. 85; Acts 1927, 40th Leg., 1st C. S., p. 496, ch. 107, sec. 14.)

Art. 7880-86. Issuance of bonds: requirements

The bonds issued under the provisions of this Act shall be issued in the name of the district, signed by the president and attested by the secretary, with the seal of the district affixed thereto, and said bonds shall be issued in denominations of not less than one hundred dollars nor more than one thousand dollars each, and such bonds shall bear interest at the rate of not to exceed six per cent per annum, payable annually or semiannually. Such bonds shall by their terms provide the time, place or places, manner and condition of their payment and the interest thereon, as may be determined and ordered by the directors of said district, and none of such bonds shall be made payable more than forty years after the date thereof, provided that the lien for the payments due the United States under any contract between the district and the United States accompanying which bonds have not been deposited with the United States, shall be preferred lien to that of any issue of bonds or any series of any issue subsequent to the date of such contract. (Acts 1925, 39th Leg., p. 109, ch. 25, sec. 86; Acts 1927, 40th Leg., 1st C. S., p. 496, ch. 107, Sec. 15.)

Art. 7880-87. Limitation of indebtedness

After the canvass of the vote and declaring the result, as provided for, the directors shall make and enter an order directing the issuance of bonds or authorizing the execution of a contract with the United States for such district, as the case may be, sufficient in amount to pay for such improvements, together with all necessary incidental expense connected therewith not to exceed the amount specified in the order for the election and the notice of election. In districts organized under the authority of Article 3, Section 52 of the Constitution the amount

of such bonds, or the amount of contract indebtedness with the United States shall not exceed in amount one-fourth of the actual assessed value of the real property of such district as shown by the assessment thereof made for the purpose of determining the value thereof, or at the last annual assessment as provided for in this Act. This limitation of indebtedness of one-fourth of the assessed value shall not apply to districts organized under the authority of Section 59 of Article 16 of the Constitution. (Acts 1925, 39th Leg., ch. 25, p. 109, sec. 87.)

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Art. 7880-89. Additional funds for improvements; bonds

If it should come to pass that the works, improvements and facilities set out in any plan adopted by a district, as provided in Sections 78 and 139, are found to be not adequate to accomplish the beneficial results of which the district's location and conditions admit, or may demand; or if repairs, replacements or additions to the district's works to cost twenty-five thousand ($25,000.00) Dollars, or more, are deemed necessary; or, if additional funds are required to complete the improvements as planned; then in respect thereto, the Board of Directors of the District shall proceed to provide the additional funds for the required object, or objects, in all respects in accordance with the provisions of this Act regulating the creation of bond obligations by a district, and may so create additional indebtedness, or issue additional bonds, but in all cases subject to every limitation in respect to such original proceedings, and the substantial protection of the substantive rights of the holders of any other obligations of the district then outstanding: Such expenditures up to $25,000.00 may be made and obligations issued therefor, based on adequate tax levies, by order of the district's directors without submitting the issue

to the electors of the district. (Acts 1925, 39th Leg., p. 110, ch. 25, sec. 89; Acts 1927, 40th Leg., 1st C. S., p. 496, ch. 107, sec. 16; Acts 1929, 41st Leg., p. 578, ch. 280, sec. 11.)

Art. 7880-90. Bonds; payment; form

Whenever such bonds have been voted, the directors for such district shall levy a tax upon all property within such district sufficient in amount to pay the interest on such bonds together with an additional amount to be placed in the sinking fund, sufficient to redeem and discharge such bonds at their maturity, and said directors of such district shall annually levy or cause to be assessed and collected taxes upon all property within said district in an amount sufficient to pay for the expense of assessing and collecting said taxes. Whenever contract shall be made with the United States, taxes shall similarly be levied sufficient in amount to meet all installments as they become payable, and interest if any, and the directors shall cause due levy annually to be made until all such contracts and obligations shall have been discharged. Such bonds may be issued in serial form, or payable in installments, as determined by said directors, and such tax levy shall be sufficient if it provides an amount sufficient to pay the interest on such bonds and to meet the proportionate amount of the principal of the next maturing series of such bonds and the expenses of assessing and collecting such taxes for such year. (Acts 1925, 39th Leg., ch. 25, p. 114, sec. 90.)

Art. 7880-90a. Pledge of revenues to secure bonds

This section shall apply only to such water control and improvement districts as have adopted (or hereafter may adopt) a plan for improvements designed to furnish

a water system, or a sewer system, or a water and sewer system (either by construction, or purchase, or purchase and construction), for service in areas, urban or industrial in nature, but not incorporated under the laws of Texas relating to the creation of cities, and which districts have, or have expectancy for, net revenue from operations (to exclude all income from *ad valorem* taxes, specific assessments of benefits or taxation upon the basis of dollars per acre, but to embrace all other income or revenues), in lieu of securing its bonds as provided in Section 90 (next foregoing), electively may provide for the payment of the same in any one of the following manners to-wit: 1--As provided for by Section 90, next foregoing; 2--by entering into contracts for the pledge of the net revenues of the district, as hereinafter defined and provided for; 3--by securing the bonds in both manners 1 and 2; and: The expression "net revenue", as used herein, shall be understood to exclude any money derived from taxation, but to include all income or increment which may grow out of the ownership and operation of the improvements or facilities produced by use of the money for which such bonds are given; less such proportion of the district's revenue income as reasonably may be required to provide for the administration, efficient operation and adequate maintenance of the district's service facilities; and:

In case such obligations are secured under method 3 foregoing, at such time as net revenues, together with the money derived from taxes, in the sinking fund may have accumulated a surplus equal to the sum to be required in the succeeding year to liquidate the interest and principal of the district's obligations maturing in that year, the district's annual tax levies may be lowered to produce not less than twenty-five per centum (25%)

of the bond maturities for such succeeding year, until an actual experience of three successive years may demonstrate that the net revenues are wholly adequate to protect the maturities of the district's obligations; and, at such time the district's tax may be wholly abated, until further experience may demonstrate the necessity again to exert the district's taxing power in order to avoid default in the payment of the district's said obligations, as the same may mature; and:

In case it is proposed to issue money obligations to be liquidated under method 2 or method 3, hereinabove authorized, at the election held for the authorization thereof, the proposition to be submitted under Section 81 of said Chapter 25 (Acts of the 39th Legislature, Regular Session) shall be: "For issuance of bonds and the pledge of net revenues for the payment thereof"--And, the contrary thereof; or "For the issuance of bonds, the pledge of net revenues and the levy of taxes adequate to provide for the payment thereof,"--And, the contrary thereof, to be as the proposal may require. (Acts 1925, 39th Leg., p. 86, ch. 25, sec. 90a, as added Acts 1934, 43rd Leg., 3rd C. S., p. 56 ch. 32 sec. 1.)

Art. 7880-91. Tax levy; investment of sinking fund

The tax levy made in connection with the issuance of any bonds shall remain in force from year to year as the levy for the purpose to be collected, until a new levy shall be made. The board of directors may from time to time increase or diminish such tax, so as to adjust the same for the taxable values of the property subject to taxation by the district and the amount required to be collected, and shall in every such levy raise thereby an amount sufficient to pay the annual interest and sinking fund on all bonds then outstanding.

The board of directors may invest any portion of the sinking fund of the district set aside for the redemption of its outstanding bonds in bonds of the United States, of the State of Texas, or of any county or city within the State, of any irrigation or water improvement district, school district, or other tax bonds issued under the laws of the State of Texas such funds may be so invested when the bonds to be paid thereby do not mature within three years from the time of making such investment and when same is necessary to preserve the best interests of said district. (Acts 1925, 39th Leg., ch. 25, p. 111, sec. 91.)

Art. 7880-92. Refunding bonds

Any district governed by this Act which has heretofore been organized under the laws of this State and any district hereafter organized under the provisions hereof, may refund any bonds issued by issuing new bonds for that purpose, provided the said old bonds are taken in exchange at their face value or less, or in event such new bonds can be sold at a premium and the old bonds retired thereby without loss to the district.

The Comptroller shall not register such new bonds until the old bonds in lieu of which they are issued, are presented to him for cancellation, or until a valid contract has been entered into and a copy thereof filed with the Comptroller providing for the purchase of such old bonds or exchange thereof. The Comptroller shall keep said new bonds until the old ones are presented to him for exchange or payment. In case same are presented for payment, the district shall pay same before such new bonds are registered. (Acts 1925, 39th Leg., ch. 25, p. 112, sec. 92.)

Art. 7880-93. Limitation of indebtedness

No district shall issue bonds or create indebtedness in an amount more than that authorized by the provision of the Constitution of the State of Texas, authorizing the issuance of such bonds or the creation of such indebtedness. (Acts 1925, 39th Leg., ch. 25, p. 112, sec. 93.)

Art. 7880-94. Interest and sinking fund

There is hereby created what shall be termed the "Interest and Sinking Fund" for such district, and all taxes collected under the provisions of this Act, for such fund, shall be credited to such fund, and shall never be paid out except for the purpose of satisfying and discharging the interest on said bonds, the payment of such bonds, and to defray the expenses of assessing and collecting such tax, and for the payment of principal and interest due the United States under any contract between the district and the United States accompanying which bonds of the district have not been deposited with the United States as herein provided; such fund shall be paid out upon the order of the board of directors of such district upon warrants drawn therefor, as herein provided, and at the time of such payment the depository for such district shall receive and cancel any interest coupon as paid or any bond as paid, and when any such interest coupon or bond has been paid it shall be delivered to the directors and be cancelled and destroyed. (Acts 1925, 39th Leg., ch. 25, p. 112, sec. 94.)

Art. 7880-95. Suit to validate bonds

Whenever any district shall have issued bonds including preliminary bonds as herein provided and may desire to validate same by suit as hereinafter provided, such suit may be filed for the validation or the organization of such

district and of such bonds and after the rendition of a final judgment therein said bonds or contract shall be incontestable and no suit shall be brought in any court of this State contesting or enjoining the validity of the formation of any such district or any bonds issued thereby or contesting or enjoining the validity of any contract with the United States or of authorization thereof by the district, except in the name of the State of Texas, by the Attorney General upon his own motion or upon the motion of any party affected thereby upon good cause shown. No such suit shall be filed or prosecuted by the Attorney General unless based upon allegations of fraud disclosed or found after the rendition of a final judgment in such validation suit. If such validation suit is filed it shall not be necessary to have said bonds approved by the Attorney General as herein otherwise provided. (Acts 1925, 39th Leg., p. 112, ch. 25, sec. 95; Acts 1927, 40th Leg., 1st C. S., p. 496, ch. 107, sec. 17.)

Art. 7880-96. Jurisdiction; notice

Such validation suit shall be brought by the district in the district court in any county in which said district or any part thereof is located, or in any county of the judicial district in which such district is located, or in the district court of Travis County. Such suit shall be to determine the validity of the organization of such district and determine the validity of such bonds; or such district contracting with the United States shall, if requested by the Secretary of the Interior, bring such an action to determine the validity of such contract. Such suits shall be in the nature of a proceeding *in rem* and jurisdiction of all parties thereto and interested therein shall be had by publication of a general notice thereof once each week for at least two consecutive weeks prior to the term of court to

which same is returnable. Said notice shall be published in some newspaper of general circulation in the county or counties in which such district is situated, and if no paper is published in such county or counties, then same shall be published in a newspaper of the nearest county thereto where a paper is published. Notice shall also be served upon the Attorney General of the State of Texas of the pendency of such suit in the same manner as civil suits. The Attorney General may waive service in such suits when furnished a full transcript of the proceedings had in the formation of such district; and in connection with the issuance of such bonds; in connection with the authorization of a contract with the United States and a copy of the contract. (Acts 1925, 39th Leg., ch. 25, p. 113, sec. 96.)

Art. 7880-97. Examination by Attorney General; intervention

It shall be the duty of the Attorney General to make an examination of all such proceedings and require such further evidence and make such further examination as may seem advisable to him. He shall then file an answer tendering the issue as whether such proceedings are valid and such bonds are legal and binding obligations upon such district, or as the case may be, as to whether such contract with the United States is legal and binding upon the districts. Any person interested therein may intervene in said cause or file answer therein. The issue thus made shall be tried and determined by the court and judgment be entered upon such finding. If such bonds shall have been approved by the Attorney General and have been registered before such suit is filed then the filing of such suit cancels prior registration. All suits brought under the provisions of this Act shall have prefer-

ence over all other actions in order that a speedy determination thereof may be had. (Acts 1925, 39th Leg., ch. 25, p. 113, sec. 97.)

Art. 7880-98. Judgment *res adjudicata*

Upon the trial with the issues made in accordance with the preceding section of this Act, if the judgment of the court shall be adverse to the district upon any issue, then such judgment may be by said district excepting and the error pointed out in such proceedings may be corrected, the judge in the manner directed by the court and when so corrected, the judgment of the court shall be rendered showing that such corrections have been made, and that the bonds issued thereunder, or the contract with the United States are binding obligations upon such district. And thereafter the judgment so finally made and entered shall be received as *res adjudicata* in all cases thereafter arising in connection with the collection of said bonds, or any interest due thereon, or of any taxes levied by the district to pay the charges thereon, or in connection with the collection of moneys required by a contract with the United States, and as to all matters pertaining to the organization and validity of said district or pertaining to the validity of such bonds, or of a contract with the United States. (Acts 1925, 39th Leg., ch. 25, p. 113, sec. 98.)

Art. 7880-99. Certified copy of decree conclusive evidence

After the making and entry of the judgment of the district court as herein provided the clerk of said court shall make a certified copy of such decree which shall be filed in the office of the State Comptroller and be by him recorded in a book kept for that purpose. Said certified copy, or a certified copy of said record thereof, made and kept by the Comptroller, shall be received in evidence

in any suit thereafter arising which may affect the validity of the organization of such district, or the validity of such bonds, or of such contract with the United States, and shall be conclusive evidence of such validity. (Acts 1925, 39th Leg., ch. 25, p. 114, sec. 99.)

Art. 7880-100. Registration of bonds; certificate

Upon the presentation of said bonds together with certified copy of the decree of the district court, the Comptroller shall register such bonds in a book kept in his office for that purpose, and shall attach to each of said bonds a certificate of the fact that the decree of the district court as required by this Act has been filed and recorded in his office. Said certificate shall be signed officially and the seal of his office attached thereto. (Acts 1925, 39th Leg., ch. 25, p. 114, sec. 100.)

Art. 7880-101. Sale of bonds

After the issuance of such bonds as herein provided the directors of a district shall sell same on the best terms and for the best possible price, but none of said bonds shall be sold for less than ninety per cent of their face value. When said bonds are sold the proceeds thereof shall be paid over by the directors to the depository for said district. The district may exchange bonds for property acquired by purchase, or in payment of the contract price of work done for the use and benefit of said district. (Acts 1925, 39th Leg., ch. 25, p. 114, sec. 101.)

Arts. 7880-102. "Construction Fund"

The proceeds of any such bonds sold and deposited in the depository shall be credited to the special fund designated "Construction Fund." All expenses, debts and obligations necessarily incurred in the creation and estab-

lishment and maintenance of any district may be paid out of the construction fund and all cost of purchase of property and construction contracts may be paid from said fund including all purchases for which same were issued. If same are issued in accordance with a contract made or to be made with the United States as herein provided all debts and obligations may be paid therefrom under the terms of such contract, or incident thereto. After the payment of all obligations for which such bonds were issued to pay any balance remaining therein may be transferred to the maintenance fund. (Acts 1925, 39th Leg., ch. 25, p. 114, sec. 102.)

Art. 7880-103. "Maintenance Fund"

Such district shall have a fund to be known as the "Maintenance Fund" into which shall be paid all funds collected by assessment or otherwise for the maintenance, repair and operation of the properties and plant of the district, or for temporary annual rental due to the United States. Out of said fund shall be paid in all expenses of maintenance, repair and operation of the district, except the expenses of assessing and collecting taxes for the interest and sinking fund may be paid out of that fund. Out of said fund may be paid all expenses not herein otherwise provided for. (Acts 1925, 39th Leg., ch. 25, p. 115, sec. 103.)

Art. 7880-104. "Amortization and Emergency Fund"

All such funds heretofore created and existing under the laws of this State shall be preserved and used as herein provided. The board of directors of each district shall cause to be made by a competent engineer an inspection and valuation of all the physical properties of

such district, subject to decay or obsolescence, injury or damage by any sudden, accidental or unusual cause whatsoever, and based upon inspection and valuation said engineer shall determine, as nearly as may be, a sum to be annually set aside as will be sufficient to pay for replacement of each item of such physical property at the end of its economical life, or for the restoration or replacement of any such physical property upon the happening of such loss, injury or damage thereto. Out of the maintenance and operation fund, as the same shall be collected, such board of directors shall set aside such portion thereof as shall be necessary to make each year the amount of the annual sum determined as above provided to be known as the "Amortization and Emergency Fund", and no part of such fund shall be expended except to replace such amortization property, or to replace or restore such lost, injured or damaged property. Any part of the amortization and emergency fund not necessarily expended for the purposes above provided, may be invested in bonds or interest bearing securities of the United States. Provided, that any such board of directors may or may not in the discretion of such board, establish such amortization and emergency fund, but after each fund has been established for any such district as above provided, the same shall thereafter be kept up and maintained. (Acts 1925, 39th Leg., ch. 25, p. 115, sec. 104.)

Art. 7880-105. District funds; how handled

All district funds shall be handled by and under the orders of the board of directors upon warrants drawn therefor. At the time of the payment of interest coupon or of any bonds the directors shall receive and cancel same and make a record thereof which same shall be destroyed. (Acts 1925, 39th Leg., ch. 25, p. 115, sec. 105.)

Art. 7880-106. Charges for water furnished

All such districts shall have authority to make, establish and collect maintenance and operation charges for the service they render which may be determined and fixed upon the basis of the quantity of water furnished or appropriate measure of the service rendered, and if based upon a use of water a fixed charge may be made as a minimum charge on all lands, water connections or other service entitled to receive and use same, and an additional charge may be made for the use of water in excess of that covered by the minimum charge. The district may install proper measuring devices or require that same be installed. Where a district includes a city or town or contracts with a city or town to supply it water, the charge for the use and delivery of such water and the time and manner of payment shall be determined by the board of directors or be fixed by contract made by the directors. (Acts 1925, 39th Leg., ch. 25, p. 115, sec. 106.)

Art. 7880-107. Taxation to maintain proper service

All such districts shall have authority to levy and collect taxes to secure funds to maintain, repair and operate all plants, properties and improvements of the district and to give and maintain proper service for the purposes of its organization. (Acts 1925, 39th Leg., ch. 25, p. 116, sec. 107.)

Art. 7880-108. Power to refuse service

Every such district shall have the power and authority to refuse service of water to anyone therein or entitled thereto who shall refuse to pay the charges and assessments therefor or who shall fail or refuse to pay

any taxes levied against his property after six months from the date same become delinquent. (Acts 1925, 39th Leg., ch. 25, p. 116, sec. 108.)

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Art. 7880-110. Surplus or deficiency; notice of assessment

In the event the assessment made as provided for in the preceding section should be more than sufficient to meet the necessary obligations of the district, the balance shall be carried over to the next season; and in the events the assessments are not sufficient to meet the expenses the balance unpaid shall be assessed pro rata, in accordance with the assessments previously made for the then current year, and shall be paid under the same conditions and penalties within thirty days from the time such assessment is made. Public notice of all such assessments shall be given by posting printed notice thereof in at least three public places in the district, and printed notice shall be mailed to each land owner, provided, however, that each land owner shall furnish to the board of directors his correct postoffice address. Such notice shall be given by posting and mailing such notice five days before the assessment is due, and in the event of special assessments such notice shall be given within ten days after such assessments are levied. (Acts 1925, 39th Leg., ch. 25, p. 118, sec. 110.)

Art. 7880-111. Collection of assessments

All assessments for maintenance and operation expenses under the provisions of this Act shall be collected under the direction of the directors by the assessor and collector of taxes, or other person designated by them, which said officer shall give such bond as they may direct

conditioned upon the faithful performance of his duties and accounting for all money collected. He shall keep a true account of all money collected and deposit the same as collected in the district depository and shall file with the secretary of the directors a true statement of all money collected once each week. The collector shall use duplicate receipt books and shall give a true receipt for each collection made, retaining in such books true copy thereof, which shall be preserved as a record of the district. (Acts 1925, 39th Leg., ch. 25, p. 118, sec. 111.

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Art. 7880-130. Benefit or *ad valorem* basis for tax levy

Any district now, or hereafter to be, operating under the provisions, and powers, of Section 59 of Article XVI of the Constitution of Texas, shall at the time of its creation, or at any time thereafter before appointing commissioners of appraisement, as provided for in Section 132 and Section 77a of Chapter 25, adopt a tax plan under the alternative provisions of this Section. The intent hereof is to give to districts such flexibility of taxing power as will permit, and cause, the tax of any given district to be in fact equitably distributed, and to give the highest practicable degree of service, under the peculiar physical and economic conditions of such district; To this end, this Section shall be liberally and sympathetically, construed.

The district's taxes for all purposes, other than for the payment of the cost of preliminary surveys, may be levied, assessed and collected on an adopted basis to be chosen from the elective plans here provided. The district's tax plan may be any one of the following plans, or bases, as follows, viz:

(1) Wholly *ad valorem*: (2) Assessments in proportion to the respective individual benefits, as the same may be specifically appraised: (3) *Ad valorem* as to some part, or per centum, of the total tax required, or as to some defined part of the district; and on the basis of specific assessment of benefits as to the remainder of the total tax required, or, and, as to some defined part of the district: (4) Any district created under the provisions of Section 59 of Article XVL of the Constitution of Texas, may, either before or after the sale of Construction bonds, adopt a tax plan which, while wholly *ad valorem,* or wholly on the basis of assessment of specific benefits, insofar as may be required for the retirement of any obligations of the district, may provide that the district may separately assess, levy and collect taxes on the basis *ad valorem,* or on the basis specific assessment of benefits, on designated property or defined areas within the district, to make available to, or to reimburse, the district for any sums paid out, or to be paid out, on account of improvements and facilities for service peculiar to such defined part of the district and not generally and directly benefiting the district as a whole. Upon adoption of the plan provided in this subdivision (4), the district may, under the limitations of this section, separately, differentially, equitably and specifically apply its taxing powers, and lien to a defined area, or designated property, to provide the money wherewith to construct, administer, maintain and operate improvements and facilities peculiar to such defined areas or designated property.

Before the appointment of a commission of appraisement, and the sale of construction bonds, save as provided in subdivision (4) foregoing, and hereinafter provided, the directors of a district shall, as provided in Section 77a, adopt a proposed plan of taxation. If the plan proposed be other than wholly *ad valorem*, or wholly assessment

of specific benefits, then the order adopting a proposed plan shall specify what part of the tax is proposed on each basis; they shall also designate the physical and economic reasons, or peculiar diverse local needs, or comparative potential benefits, of different areas, or designated property, within the district, which, in their judgment, make it necessary, or more equitable, to levy part of the tax, or the tax on a defined part of the district, or designated property, on the basis of assessment of specific benefits, or *ad valorem*, or a composite of such bases, or separately on defined areas, or designated property, if such be the case. Having adopted such a proposed tax plan the directors of the district shall publish notice thereof in one or more newspapers to give general circulation in the county, or counties, in which the district is located, once a week for two consecutive weeks, advising those interested that a proposed tax plan has been adopted; that the same is open for inspection in the district's office; that a hearing thereon will be held by the directors at a specified place and at a certain time, to be not less than fifteen days, nor more than twenty days, after the first publication of notice; that all interested persons may appear and contend for, or protest against, the proposed tax plan, or any part thereof, and offer testimony thereto. After all persons appearing shall have been heard, the directors may approve said tax plan as proposed, or they may change or modify the same, and thereupon approve and adopt such tax plan as will in their judgment, under the evidence before them, most equitably distribute the district's tax burden and conserve the public welfare: Thereupon they shall enter their order establishing the district's tax plan, which shall become the basis for the assessment and collection of taxes by the district, until such time as a different plan may be adopted, which may at any time, when required to preserve equity of distribu-

tion, be done in the same manner herein provided. This order shall not be subject to judicial review save upon the ground of fraud, palpable error, or, arbitrary and confiscatory abuse of discretion. No change of tax plan shall be adopted which will impair the ability of the district promptly to meet all outstanding obligations of the district within the intent of Section 91 of said Chapter 25.

If a district had adopted the tax plan, and assumed the powers, set out in subdivision (4) of this Section, and, acting thereunder, does desire to define an area within the district requiring, or desiring, improvements or facilities peculiar to that area and not generally affecting the district as a whole, then such improvements, service, or facilities, peculiar to such designated area, or property and not affecting the district as a whole; or when such improvements, though local in character, are required to conserve and protect the public welfare, may be provided, paid for, maintained and operated in the following manner, viz.:

(a) The directors of the district shall define the area by metes and bounds, or designate the property, to be served, affected and taxed: (b) They shall adopt a plan for improvements within the area, or to serve the property designated, as is provided in Section 78 of said Chapter 25: (c) They shall adopt a plan of taxation to apply to the defined area, or designated property, which tax may, or may not, be in addition to other taxes imposed by the district on the same area of property. The proportional tax, or income, contributions of a defined area, or designated property, to the district, and the proportional and equitable interest of the district at large, shall be taken into consideration in imposing any tax to be peculiar to the designated area or property: (d) They shall hold a hearing in the same manner, to the same purpose and after the

same notice as is before provided in this Section. If at such hearing the directors of the district find for defining and serving the proposed separate tax area, or separate designated property, they shall enter their order of record, and if such proposal involves the issue of bonds by the district, they shall call an election in the district as a whole, and the issues may be submitted on the same ballot to be used in any other election to be held, submitting to the qualified electors of the district the appropriate issues, and such election and issues shall in all things conform to the appropriate provisions of Sections 78 to 83, both inclusive, of said Chapter 25, as now amended or as may hereafter be provided: In addition to said requirements, the notice of election in this Section provided shall define the area to be designated and the plan of taxation to be applied to the defined area, or designated property. If the improvements proposed to be provided within a defined area are deemed to be peculiarly for the benefit of the area, and not required to conserve the public or general welfare within the district as a whole; and, if in such case the proposed improvements within the defined area will require the imposition of a tax burden peculiar to that area; then, and in case of concurrence of these conditions; such defined area shall be constituted a separate election precinct wherein there must be held an election to determine if such improvements shall be provided, as proposed by a plan adopted as in this Act provided, and a separate tax levied on the defined area. Such election shall be held in such manner as will in all things conform to the provisions of this Act relating to the issuance of bonds by a district: If a statutory majority vote in the defined area favors the proposal, then the district shall, when necessary provide money, and shall provide the improvements and levy the tax. At an election within such defined area, in addition to the qualified electors who reside within the

area, each qualified elector of the district who is the owner of taxable land located within the defined area, may elect to vote therein and not to vote in the precinct of his residence. In case of an election favoring the issuance of bonds and the levy of a tax peculiar to such defined area the district may issue bonds pledging only the faith and credit based on the property values within the defined area: The district may however pledge the full faith and credit of the district as a whole under the condition of authorization set out in subdivision (I) of this Section. If the proposed improvements are deemed to be required to promote the public welfare; or, if the owners of all of the land within a defined area file a petition, acknowledged as required for deeds, requesting the district to provide improvements and assess the tax to be peculiar to the area; then, and in either event, it shall not be necessary to constitute such area a separate election precinct and have regard to the vote therein. (e) The ballot for an election under the provisions of this Section, in appropriate case, shall have printed thereon substantially the following: "For designation of the area, the issuance of bonds and the levy of a tax to retire bonds", and, in appropriate case, "to administer, maintain and operate works and facilities", and "Against such designation, the issuance of bonds and tax levies": (f) If the majority vote favors the proposal, the directors of the district shall declare the result and by their order establish the area and define the same by metes and bounds, or designate the specific property, and fix the tax basis therefor. A certified copy of this order shall be recorded in the minutes of the district, which shall constitute notice thereof: (g) Thereafter the district may issue its bonds to provide the specific plant, works and facilities embraced in the plans adopted for such de-

fined area, or to serve such designated property, and shall provide the same; they shall in appropriate case, separately levy, assess and collect taxes on the property located in the defined area, or upon the designated property, in conformity to the tax plan adopted: (h) property, or areas, either within or without the boundaries of a district, may by contract, be designated for the purpose of procuring the improvements, facilities or service for such designated property, or area. Such designation shall be based upon a written petition, authorized in conformity to the laws governing the making of contracts by the petitioner, or person (as defined in Section 1 of this Act), owning, controlling or governing the property or areas desired to be designated. Such designation may be established by the district's directors under contract for providing, administering, maintaining and operatng the desired improvements, facilites or service for such designated property, or area. Such designated property, or area, thereupon shall become subject to being made the basis of bonds to be issued by the district and may be subject to a tax lien by, or for the amount of the district, to retire the obligations which the district may incur to provide the improvements, facilities or service peculiar to the designated property or area, and as well to cover the expense necessary to administer, maintain and operate such improvements and facilities, in conformity to the contract or designation. It is provided that all such contracts for designation, the issuance of bonds and the imposing and collection of taxes must not violate this law or any other law of the State of Texas, or of the United States; and, such contracts must not result to impair any vested right, nor cause the district to fail fully and permanently to serve water demands within its boundaries in the order of superiority of uses, as the same are declared in Section 3 of said Chapter 107.

Said contracts may provide that one body politic may, in conformity to the law if its being and the contract, establish the contractual; and statutory, tax lien, hereby provided, in behalf of the district, and may levy, assess and collect the tax thereunder, for and on behalf of the district: The district shall not issue bonds pledging the full faith and credit of the district under the provisions of subdivision (d) and this subdivision of Section 130, without submitting the same to a vote of the qualified electors of the whole district under the same provisions, insofar as the same are applicable, as are provided to authorize the issuance of construction bonds by the district: (i) if the majority vote in the district as a whole does favor the proposal, the district may issue its bonds to provide the plant, improvements and facilities peculiar to the area, or areas defined, or peculiar to designated property, or peculiar to a given contract for service, and may pledge the full faith and credit of the district for the payment thereof, in which event the district shall have its lien upon the area defined, or the property designated, or as specified in such contract, and may levy, assess and collect, or procure to be levied, assessed and collected, taxes on the same to protect the district from, or to compensate, any liability it may incur for or on behalf of the defined area or designated property. (j) The directors of such district shall administer all business incident to the creation and operations of a defined area, or service to designated property, unless otherwise provided by contract. (Acts 1925, 39th Leg., p. 124, ch. 25, sec. 130; Acts 1927, 40th Leg., 1st C. S., p. 496, ch. 107, sec. 21; Acts 1929, 41st Leg., p. 578, ch. 280, sec. 15.)

Art. 7880-131. Directors to apportion and assess benefits

In the event an irrigation or water improvement district shall have heretofore been operated or shall

hereafter be operated under contract with the United States and such district shall have adopted or may adopt the plan of the levy and collection of taxes on a benefit basis, instead of an *ad valorem* basis, then the directors of said district shall at some convenient time thereafter, and from time to time as may be necessary act as a board to apportion and assess the benefts conferred upon any and all property situated within such district and shall cause a record to be made showing the amount and value of the benefits computed to accrue to all of the property situated within such district and subject to taxation, and the amount of taxes upon such basis to be levied and collected against such property; provided that no taxes so assessed or adjudged against such property shall be in excess of the benefit accruing and to accrue to such property from the organization, operation and maintenance of such district and the improvements to be constructed or purchased thereby. After such record shall have been made up the board shall cause notice to be mailed to each property owner whose name appears upon such record showing the amount of taxes to be levied against such property and fixing a date and place at which such owner may appear and contest the correctness and equitableness of such tax. And after such hearing, said board or other governing body shall determine the inequitableness of the tax and sustain, reduce, or increase the same as in their judgment shall be just and equitable, and the decision of such board shall be final. All of the provisions hereof not inconsistent therewith shall apply to the levy, assessment and collection of the taxes herein provided for. (Acts 1925, 39th Leg., ch. 25, p. 125, sec. 131.)

Art. 7880-132. Manner of levying assessment, collection of taxes, etc.

In the event that any district other than those operating under contract with the United States shall adopt the assessment for benefit plan of taxation as provided by law, then in that event, the levy, assessment, equalization of property values and collection of taxes shall be made in the manner herein provided.

A. As soon as practicable after the approval of the report of the engineer, and the adoption of the plan of improvements to be constructed, the board of directors shall appoint three disinterested commissioners, who shall be known as commissioners of appraisement, but who shall be freeholders, but not owners of land within the district for which they are to act.

B. The secretary of the board of directors immediately following the appointment of the commissioners of appraisement shall, in writing, notify each of his appointment and in the notice designate the time and place for the first meeting of such commissioners. It shall be the duty of the commissioners to meet at the time and place specified or as soon thereafter as possible and when they shall each take and subscribe an oath that they will faithfully and impartially perform their duty as such commissioners, and make true report of the work done by them, and at such meeting the commissioners shall organize by electing one of their members chairman and one vice-chairman, and the secretary of the board of directors, or in his absence such person as the board of directors may appoint, shall be the secretary of said commissioners during their continuance in office and shall furnish to them such information and such assistance as may be within his power and necessary to the performance of their duties.

C. Within thirty days after qualifying and organizing as above directed, the commissioners of the appraisement shall begin their duties, and they may at any time call upon the attorney of the district for legal advice and information relative to such duties, and may if necessary require the presence of the district engineer or one of his assistants at such times and for so long as may be necessary for the proper performance of their duties. Such commissioners shall proceed to view the lands in such district as will be affected by the plan of reclamation for such district as carried out, and all public roads, railroads, rights of way and other property or improvements located within such districts and shall assess the amounts of benefits and all damages, if any, that will accrue to any tract of land or other property within such district or to any public highway, railroad and other rights of way, roadways or other property from carrying out and putting into effect the improvements to be constructed by such district. The board shall prepare a report of their findings which shall show the owner of each piece of property examined and on or concerning which any assessment is made, together with such description of said property as may identify the same, with the amount of damages and all benefits assessed for and on account of or against the same, which said report shall be signed by at least a majority of said commissioners and filed with the secretary of the board of directors of the district, and which report shall also show the number of days each commissioner has been employed and the actual expense incurred by each during his service as commissioner, and each shall be paid by the district not to exceed ten dollars per day for his services, and all necessary expenses in addition thereto on approval of the account for such *per diem* and expenses by the board of directors. Said commissioners shall in their said report

fix a time and place when and where they will hear objections thereto, and such date shall not be more than twenty days after filing such report.

D. At or before the hearing upon the report of the commissioners of appraisement, any owner of land or other property affected by such report or the plan of reclamation or improvements may file exceptions to any or all parts of such report and said commissioners at the time and place specified in the notice shall proceed to hear and base opinion on such objections, and where such objections are sustained, in whole or in part, may make such changes and modifications from time to time as may be necessary to conform the report to their findings. When the commissioners shall have finally acted, they shall make a decree confirming such report in so far as it is confirmed, and confirming and approving the same as modified or changed in so far as it may be modified or changed. The commissioners shall have power to adjudge and apportion costs incurred upon the hearing in such manner as may be deemed equitable. The findings of the commissioners as to damages and benefits to lands, railroads and other property within the district shall be final and conclusive. The final decree and judgment of the commissioners shall be entered of record in the minutes of the board of directors, and certified copies thereof shall be filed with the county clerk of each county in which any portion of the lands within such district are located, as a permanent record of such county and such findings shall be notice to all persons of the contents and purpose of such decree.

E. When the report of the commissioners shall have been filed with the secretary of the board of directors, he shall forthwith give notice by publication in a newspaper published in each county wherein any portion of the dis-

trict is located for at least once a week for two consecutive weeks prior to the date fixed for such hearing of the time and place for such hearing, and he shall also mail a written notice to all persons whose property will in any wise be affected by the carrying out of the plan of reclamation and improvement if his post office is known stating the time and place of such meeting, which notice shall state in substance that the report of the commissioners to assess benefits and damages accruing to land or other property by reason of the plan of reclamation and improvement for the district in question has been filed in his office and that all persons interested therein may examine same and make objections thereto in whole or in part, and that the commissioners will meet on the day and at the place named for the purpose of hearing and acting on objections to such report, and the secretary upon the day of hearing shall file in his office the original notice with his affidavit thereto, showing the manner of publication and the names of all persons to whom notices have been mailed and that post offices of those to be affected to whom notices were not mailed were unknown to him, and could not be ascertained by reasonable diligence, and copies of such notice and affidavit shall be filed, one with the commissioners of appraisement and one with the clerk of the county commissioners' court.

F. After the action of the commissioners of appraisement as aforesaid, their final findings, judgment and decree, until lawfully changed or modified shall form the basis of taxation within and for the district for which they shall have acted for all purposes for which taxes may be levied by, for and on behalf of such district and all taxes shall be apportioned and levied on each tract of land, railroad and other real property in the district in proportion to the net benefits of the property named in

in such final judgment or decree as shown thereby. In all matters before the commissioners of appraisement parties interested therein may not only appear in person or by attorney, but they shall be entitled to process for witnesses to be issued by the chairman of the commissioners of appraisement on demand, and such commissioners shall have the same power as a court of record to force the attendance of witnesses. (Acts 1925, 39th Leg., ch. 25, p. 125, sec. 132.)

Art. 7880-133. Benefit plan of taxation

In the event that any district organized under the terms of Section 59 of Article 16 of the Constitution shall adopt or have adopted the assessment of benefit plan of taxation instead of the *ad valorem* plan of taxation, fixing and assessment of property value on which taxes shall be levied and collected shall be made in the manner herein stated provided any such district may at the same election at which the adoption of such plan of taxation is voted upon, or at any other time before the issuance of bonds, vote upon the proposition of whether such benefits shall be fixed as an equal sum upon each acre of land that is irrigated or to be irrigated by gravity flow from the canal system of the district. In which event the amount of benefit per acre shall be voted upon as applied to all lands in the district that can be irrigated by gravity flow from the irrigation system to be constructed, or purchased, and also the benefit of lands in the district that cannot be so irrigated. When such questions are desired to be submitted and an election held to determine same the board of directors of the district shall submit same and order such election in the same manner as provided by law for other elections in such districts. The ballots for such elections shall have printed thereon the following propositions: "For uniform assessment of benefits of $.....per acre

upon all irrigable lands in the district, and the assessment of $..... per acre upon all non-irrigable lands in the district." "Against uniform assessment of benefits."

Said blank spaces in said proposition shall be filled in with the amounts as determined by said board of directors to be voted upon. Said amount of charge per acre to be found by dividing the number of acres of land into the amount of indebtedness to be incurred by the district in providing for the irrigation of same. In the event the owners of lands classed as non-irrigable object to the amount of charges fixed against them by said order of the board calling such election or as a result of said election they may have their non-irrigable lands taken out of said district by filing application therefor as provided by law within ten days after such election is held. If a majority of those voting on such proposition at such election vote in favor thereof same shall be adopted.

In the event the plan of uniform valuation of acreage for taxation is adopted as herein provided the said valuation shall be applied to all such lands and it shall not be necessary for the assessor of the board of equalization to annually fix the value thereof or equalize the values, except as herein provided nor for the board of directors of the district to appoint a commission of appraisement to ascertain or fix the value of improvements to particular lands as in other cases provided. The board of equalization will examine the renditions and tax rolls to ascertain that all property subject to the tax is placed on such tax rolls under its proper classification and add any property thereto that may be left off of such tax rolls or that may not have been rendered for taxation, and examine and correct and certify to said tax rolls. Any property owner may protest the classification of his lands as not being proper and the board of equalization shall fully consider any such protest and after their findings thereon

in their minutes in the same manner provided for protest in the case of the fixing of valuations upon property as provided by law.

The rate of taxation, the collection of taxes, assessment of property, rendering of property for taxation shall be made as now provided by law with reference to *ad valorem* taxes, except that only such lands shall be rendered or taxed and in rendering same the valuation thereof shall not be stated and it shall not be necessary that the party rendering same shall make affidavit to the value thereof nor that the value thereof be stated by the tax assessor, but same shall be rendered as subject to irrigation or not subject to irrigation.

In the event lands classed as non-irrigable are thereafter irrigated by said district, the owner thereof prior to receiving water for irrigation shall pay to the district an amount equal to the entire amount that would have been charged to same if same had originally been classed as irrigable. (Acts 1925, 39th Leg., ch. 25, p. 128, sec. 133.)

Art. 7880-134. Uniform assessment of benefits

Districts organized for the purpose of constructing levees or works and plants as a protection from overflow, and districts organized for the purpose of constructing drainage systems, may adopt the proposition that the benefits shall be fixed at an equal sum upon each acre of land therein in the manner provided in the preceding section. In such event the proposition to be voted upon shall be stated in the order of election changing the wording thereof to apply to the purpose for which the district was organized or for which bonds are to be issued, substantially as follows:--"For uniform assessment of benefits for_____ purposes," and the negative "Against uniform assessment

of benefits." (Acts 1925, 39th Leg., ch. 25, p. 129, sec. 134.)

* * * * * * * *

Art. 7880-136. Payment of judgment against district

In the event that any court within the State shall render any judgment of debt against any district such court may order the directors of such district to levy, assess and collect taxes or assessments to provide for the payment thereof. (Acts 1925, 39th Leg., ch. 25, p. 131, sec. 136.)

Art. 7880-137. Suit to protect water rights.

The board of directors are hereby empowered to institute and maintain any suit or suits to protect the water supply or other rights of the district and to prevent any unlawful interference with same or a diversion of its water supply by others and to prevent any taken or interference with such water supply or other rights. All districts may sue and be used in the name of the district by and through its board of directors. (Acts 1925, 39th Leg., ch. 25, p. 131, sec. 137.)

Art. 7880-138. Sale of surplus water

Any District may sell any surplus water that it may have to lands in the same vicinity, or to other Districts which include lands in the same vicinity, for the purpose of irrigation, domestic or commercial uses, or such District may contract to pump for or supply such other District with any waters in which such other District may have any right, if in the opinion of the Board of Directors same is advisable and on such terms as they provide. Any District may contract for the sale of water power privileges whenever it may be possible for power to be generated by the use of water flowing from their reservoir or

within its canal system, provided, however, any such contract for the sale of water power privileges shall be subject to the duty of the District to protect the lands embraced therein in an adequate supply of water for the purpose for which such District was organized or for supplying water for municipal purposes in such Districts supplying water for such purposes. (Acts 1925, 39th Leg., p. 131, ch. 25, sec. 138; Acts 1927, 40th Leg., p. 377, ch. 254, sec. 1.)

Art. 7880-139. Investigation by State Board of Water Engineers

The State Board of Water Engineers shall be and is constituted a commission to investigate and report upon the organization and feasibility of all districts which shall issue bonds under the provisions hereof. All such districts desiring to issue bonds for any purpose shall submit in writing to said board an application for investigation, together with a copy of the engineers report and a copy of data, profiles, maps, plans, and specifications prepared in connection therewith. Said board shall examine same and shall visit the project and carefully inspect the same and may ask for and shall be supplied with additional data and information requisite to a reasonable and careful investigation of the project and proposed improvements. They shall file in their office in writing their suggestions for changes and improvement and furnish a copy thereof to the board of directors of such district. If said board shall finally approve or refuse to approve such project, or the issuance of bonds for such improvements, they shall make a full written report thereon, file same in their office and furnish a copy of same to the board of directors of said district. (Acts 1925, 39th Leg., ch. 25, p. 131, sec. 139.)

* * * * * * * *

Art. 7880-147c. Validating districts and acts of districts

All Water Improvement Districts or Irrigation Districts which have heretofore complied with the requirements of Section 143 of said Chapter 25, or with Section 23 of said Chapter 107, concerning conversion into a Water Control and Improvement District, and as well all Water Control and Improvement Districts organized under the provisions of said Chapter 25, and the amendments thereto, are hereby declared to be valid and existing governmental agencies and bodies politic, and shall have all of the powers granted by said Chapter 25, and the amendments thereto. All proceedings heretofore had and taken to organize such districts, or to determine the manner in which taxes or assessments shall be levied and collected, or to bring any such district under the provisions of Section 59 of Article 16 of the Constitution of Texas, or to authorize the issuance of bonds by any such district, whether such district shall or shall not have come under the provisions of said Section 59 of Article 16 of the Constitution, or to authorize the issuance of notes or bonds, or for the election and qualification of its officers or directors, or for the construction or operations of projects jointly, or for contribution to the cost of works constructed by some other agency, or for contract with the United States of America, shall be, and hereby are, in all things approved, ratified, validated, constituted, and established as valid. Further, all such districts, which have designated boundaries sufficient to identify the area of the district, are hereby established to have the boundaries now defining such districts, just as though the metes and bounds of each of the same were specifically set out herein, and all such districts shall have the powers now provided by said Chapter 25, as amended, and also shall have such powers as may be granted by any act amending said Act.

Further, all bonds now in process of issuance by such a district, and as well all bonds heretofore issued, and sold, by such a district are hereby declared to have been validly authorized and issued, and all such bonds now in the hands of the purchasers hereof, or which may lawfully hereafter come into the hands of purchasers, are hereby established to be valid and binding obligations of such district: All tax levies, assessments and procedures precedent, or incident, to the creation of obligations by such a district are hereby established as valid, and all completed tax levies and procedures necessary, and incident, to the future issuance and sale of bonds by a district validated hereby, shall be valid, provided such levies and procedures were made and done in conformity to the provisions of said Chapter 25, or any existing amendment thereto. It is however provided that no bond or obligation shall be validated hereby unless the same shall have been authorized by a constitutional and statutory majority vote of the qualified electors of a district, and no bond validated hereby may be sold until the same has been approved by the Attorney General of Texas and registered in the office of the Comptroller of Texas. No pending proceedings at law concerning any of the matters hereby validated, and constituted, shall have the effect to impair, or bar, the validation hereby declared, save and except in the following cases, viz.:

(a) Where there is now pending in a court a proceeding seeking to establish fraud, under allegations of specific acts constituting fraud, in the issuance of bonds or other obligations by a district; or, to establish that a matter submitted to a vote of the qualified electors of a district did not in fact receive an affirmative vote sufficient to comply with the Constitution or appropriate statute of the State of Texas:

(b) Where there is pending an undetermined appeal from an order creating a district, under the provisions of Section 18 of said Chapter 25:

(c) If the litigation hereby specified as a bar to validation is not prosecuted with due diligence, and in good faith, to a final judgment, sustaining the protest, but which on the other hand does result in a final judgment sustaining the district and its acts, then the more present pendency of such litigation shall not operate to prevent the legislative validation hereby provided.

The provisions of this Section are intended as remedial legislation, and shall be liberally construed to effect the legislative intent to promote and further the conservation and development of the natural resources of the State of Texas. (Acts 1925, 39th Leg., p. 86, ch. 25, sec. 147c, added Acts 1927, 40th Leg., 1st C. S., p. 496, ch. 107, sec. 24, as amended Acts 1929, 41st Leg., p. 578, ch. 280, sec. 17.)

* * * * * * * *

Art. 7880-147t. Other powers not impaired or diminished

Nothing in this Act contained shall be held to suspend, impair or diminish the powers given to all Water Control and Improvement Districts by the provisions of Section 7, of Chapter 280 of the Acts of the 41st Legislature of Texas, Regular Session; nor, to impair any implied, necessary or incident powers which such districts lawfully may enjoy, save to the extent such powers specifically are limited by this Act. No prior or subsequent act of the Legislature shall be held to alter, diminish or impair any provision of this Act, save upon condition that there be specific repeal of one or more of the provisions of this Act. (Acts 1932, 42nd Leg., 3rd C. S., p. 56, ch. 24, sec. 5.)

* * * * * * * *

Art. 7880-147w. Validating districts, bond issues, and proceedings

That all Water Control and Improvement Districts created by authority of Chapter 25, Acts of the Thirty-ninth Legislature of 1925, and amendments thereto, and heretofore laid out and established or attempted to be established by the proper authorities are hereby ratified, validated, and confirmed in all respects as though they had been duly and legally established in the first instance. All acts of the Board or Board of Directors in such Districts ordering an election or elections declaring the results of such elections levying, attempting, or purporting to levy taxes for and on behalf of such Water Control and Improvement Districts, all bonds issued and now outstanding and all bonds heretofore voted but not yet issued are hereby in all things ratified, validated, and confirmed. The fact that by inadvertence or oversight, any act of the State Board of Water Engineers and/or other officials in the creation of any Water Control and Improvement District was omitted shall in nowise invalidate such District and the fact that by inadvertence or oversight any act was omitted by the County Commissioners and/or the Board of Directors of any such District in ordering an election or elections or declaring the result or results thereof or levying the taxes of such District or in issuance of the bonds of any such District shall in nowise invalidate any of such proceedings or any bonds so issued or ordered issued, by such District. It is expressly provided that all acts of the officials in creating or attempting to create the District, in ordering an election or elections, in declaring the results thereof or levying the taxes for such District or in issuance of the bonds of any such District, are in all respects ratified, validated, and confirmed. (Acts 1935, 44th Leg., 1st C. S., p. 1543, ch. 372, sec. 1.)

* * * * * * * *

Art. 7880-147y. Provision for cancellation of unsold bonds

Any such district which has heretofore authorized the issuance of any bonds by submitting same to an election as provided by law, and which bonds have been submitted to and approved by the Attorney General of the State of Texas, and registered by the Comptroller, as provided by law, and which bonds have not been sold by the district, may, without submitting same to an election, and by order of resolution of its Board of Directors, provide for the cancellation of all or any part of such unsold bonds, and also provide for the issuance of new bonds in lieu thereof, in like manner as provided by law for the issuance of original bonds, including the approval thereof by the Attorney General and the registration thereof by the Comptroller. Such order of the Board of Directors shall describe the bonds to be cancelled, and shall also describe the new bonds to be issued in lieu thereof. A certified copy of such order or resolution of the Board of Directors providing for the cancellation of such old bonds, together with such old bonds, shall be delivered to the Comptroller, who shall thereupon cancel and destroy such old bonds, making a record of such cancellation. (Acts 1932, 42nd Leg., 4th C. S., p. 10, ch. 3, sec. 2.)

FILED
AUG 28 1944
CHARLES ELMORE CROPLEY
CLERK

Supreme Court of the United States

OCTOBER TERM, 1944

No. 315.

W. C. LAYCOCK, *et al.*, PETITIONERS,

versus

HIDALGO COUNTY WATER CONTROL & IMPROVEMENT DISTRICT NO. 12, *et al.*
RESPONDENTS.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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LODOVIC PRINTING CO., SAN ANTONIO, TEXAS

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I.

OPINIONS OF THE COURTS BELOW.

The opinion of the Circuit Court of Appeals for the Fifth Circuit is reported in 142 Fed. (2d) 789. The findings and conclusions of the Trial Court are in the Record at pages 135-140.

II.

JURISDICTION.

The petition for writ of certiorari does not contain a statement particularly disclosing the basis upon which it is contended the Court has jurisdiction. It merely refers to the date of the judgment of the Circuit Court of Appeals and the statute and court rule with reference to the time for filing a petition for writ of certiorari. This statement does not constitute compliance with Rule 38, Paragraph 2, and Rule 12, Paragraph 1, of the Revised Rules of the Supreme Court.

The District Court and Circuit Court of Appeals had jurisdiction only by virtue of diversity of citizenship, and no constitutional question or question arising under Federal law is involved. The Petitioners seek a review of matters arising on questions of fact determined against the Petitioners under the constitution and decisions of the State of Texas relating to water control and improvement districts organized as governmental agencies and municipal subdivisions of the State.

The writ should be denied under the authority of *United States vs. Rimer*, 220 U. S. 547, and *Southern Power Co. vs. Notrh Carolina Public Service Co.*, 263 U. S. 508.

The writ should be denied for the further reason that it does not join a necessary party, the State of Texas, on whose petition in intervention the judgment complained of was in part granted.

III.

STATEMENT OF THE ISSUES

The Petitioners present four points or specifications of error raising issues as follows:

A. Petitioners contend (Point 1) that, assuming that the courts below were correct in refusing to enforce the judgment, they erred in granting and sustaining the injunctive relief "in the absence of a successful direct attack," although both the Water District and the State of Texas sought by cross-action direct equitable relief against the judgment which was granted by the Trial Court and sustained by the Circuit Court.

B. Petitioners contend (Point 2) that the Trial Court having upheld the validity of its former judgment in the law action, it could not refuse to enforce it. This contention is made by Petitioners in the face of the fact that the Trial Court on direct attack enjoined the enforcement of the judgment on equitable grounds supported by evidence that the same was groundless and secured by fraud on the jurisdiction of the Court.

C. Petitioners contend (Point 3) that the remedy of mandamus is the sole remedy for the enforcement of a judgment against a public corporation and that the Court erred in refusing the mandamus in this case, although the record shows that the mandamus sought was to virtually set up the defunct Water District as an operating public agency in order to collect an alleged judgment based on fraudulent and void obligations.

D. Petitioners contend (Point 4) that the case of *Brownsville vs. Logue*, 129 U. S. 493, is in applicable because the alleged interim bonds upon which Petitioners' rights are based were merely voidable and not void, although the record shows that said interim bonds had been

specifically held void by the appellate courts of Texas because the same were not voted as required by the Constitution of Texas.

IV.

ARGUMENT AND AUTHORITIES.

A.

Respondent Water District and the State of Texas were Successful in Direct Attack against the Judgment.

Petitioners' first point concedes the correctness of the action of the courts below in refusing to enforce the judgment but attacks the action of the court granting injunctive relief "in the absence of a successful direct attack." This point is highly technical and founded upon the sole premise that there was not "a successful direct attack" on the alleged judgment. This is a false premise.

In its answer, the Water District brought a direct attack upon the judgment based upon equitable grounds alleged in the answer. (R. 39-64). This cross-action was filed within the four year limitation period prescribed by statute. Likewise, the State of Texas in its petition in intervention brought a direct attack upon the judgment asking that the same be declared a nullity and seeking equitable relief against it. (R. 118-128). On evidence found adequate by the Trial Court and the Circuit Court of Appeals, the Trial Court granted equitable relief against the judgment as follows:

> "It is further ordered, adjudged and decreed by the Court that the enforcement for and in behalf of the plaintiffs of the judgment of this Court heretofore entered in Cause No. 891 at Law, styled W. L. Shumate, Jr. vs. Hidalgo County Water Control and Improvement District Number 12, et al., be and the same is hereby denied, and the plaintiffs in their

> several capacities aforesaid are hereby denied any relief by virtue of their ownership of such judgment. The plaintiffs and each of them in their several capacities are hereby permanently enjoined from asserting any further claims under and by virtue of said judgment in Cause No. 891 Law, and are permanently enjoined from transferring, selling and assigning said judgment or any part thereof." (R. 142).

The above injunction granted by the Trial Court against the enforcement of the Shumate judgment is a form of equitable relief commonly granted by courts of equity to relieve judgment debtors against judgments which, on equitable principles, should not be enforced.

If there be a good defense, and the party does not avail himself of it in the suit at law by reason of fraud or accident or mistake or other reasons appealing to conscience, a Court of Equity will relieve against the judgment at law. The rule is well expressed by Chief Justice Marshall in *Insurance Company vs. Hodgson*, 7 Cranch, 336, where he states:

> "Without attempting to draw any precise line to which equity will advance, and which they cannot pass, in restraining parties from availing themselves of judgments obtained at law, it may safely be said, that any fact which clearly proves it to be against conscience to execute a judgment * * * will justify an application to a court of chancery."

The fact that the judgment is based on void and fraudulently procured interest coupons and that the judgment was procured in a case in which a fraud was perpetrated on the jurisdiction of the court certainly justifies equitable relief.

B.

Trial Court Correctly Granted Equitable Relief Against Judgment Whether Judgment was Void or Merely Voidable in Equity.

Petitioners under their second point attempt to capitalize on the Trial Court's finding that the Court at the time of entering the alleged judgment had the parties properly before it and had jurisdiction of the case. Taking this as their premise, Petitioners contend that the Court had no authority to enjoin the enforcement or transfer of the judgment on equitable grounds.

This contention is based upon the fallacious assumption that equitable relief may be granted only against judgments which are *void* because the Court had no jurisdiction over the parties or the subject matter. This assumption is not supported by the authorities. If a judgment is *void* on its face, no equitable relief is ordinarily necessary.

Courts of equity grant equitable relief by injunction according to no hard and fast rules. Equities are as varied as the fact situation upon which they are based. Judgments have been set aside on the mere ground of mistake with reference to matters of fact entering into the judgment as in the case of *Bankers Trust Company vs. Hale & Kilburn Corp.*, 84 Fed. (2d) 401, where the Court said:

> "But it is to be observed that the judgment was the result of a mutual mistake of fact, namely, the supposition that these $66,400 of notes were the original notes on which Body Company was liable as guarantor when in fact they were obligations solely from Body Corporation to Hale & Kilburn. Obviously, neither the plaintiff trustee nor Body Company knew this latter fact, but, in reliance on the note registry, both acted upon the mistaken fact as did the court in awarding the default judgment.

> Equity would not permit a judgment based on such a mistake to be enforced so as to work injustice to the judgment debtor * * *. Thus Body Company could have enjoined collection of the judgment so far as it represented the $66,400, and this relief should be equally available to Body Company's shareholder-distributees."

Courts of equity have granted relief against judgments on the mere ground that the case was taken up and tried without the knowledge of the defendant's attorney after appearance had been entered in the case. Such a case is *Metcalf vs. Williams*, 104 U. S. 93, 26 L. Ed. 665. In that case, the Court said:

> "When a party has been deprived of his right by fraud, accident or mistake, and has no remedy at law, a court of equity will grant relief. Perhaps, in view of the equitable control over their own judgments which courts of law have assumed in modern times, the judgment might have been set aside, on motion, for the cause set forth in the bill; but if this were true, the remedy in equity would still be open; and the fact that the court declined to exercise the power upon motion, rendered the resort to a bill necessary and proper * * *. Courts of equity, however, still entertain bills to set aside judgments obtained by fraud, accident or mistake."

The facts of this case are bound to appeal strongly to a court of equity and to cause the court to require strict complience with all of the rules and particularly the rules with reference to fraud and mistake.

The Shumate judgment sought to be enforced by Petitioners is based on interest coupons clipped from bonds which were adjudicated to be void and ordered surrendered and cancelled in the case of *State of Texas vs. Sam L. Miller*,

155 S. W. (2d) 1012, and *State ex rel. Abney vs. Miller*, 133 Tex. 498, 128 S. W. (2d) 1134. W. C. Laycock and J. D. Norwood, the Petitioners in this case, were parties defendant in that suit and, as shown by the record, appeared by counsel and defended the case.

The alleged judgment sued on in this case was taken in the name of one W. L. Shumate, a citizen of Alabama. The Trial Court had jurisdiction of the case only if actual diversity of citizenship existed between the true parties at interest.

The record in the case shows that W. L. Shumate had no interest in the coupons sued on or the bonds from which they were taken (R. 497), but the same were the joint property of Shannon Newman and Vance Raimond, of Hidalgo County, Texas, and Petitioners W. C. Laycock, of Ohio, and J. D. Norwood, of Tennessee, in pursuance of a written joint adventure agreement (R. 443). The bonds from which the coupons were clipped were purchased in pursuance of the joint adventure agreement which defined the activities of the parties as follows:

> "That they shall undertake, as a joint adventure, the purchase, assembly, refunding, and collection of the bonds of the said Hidalgo County Water Control and Improvement District No. 12." (R. 443).

The joint venture agreement further provided that Newman and Raimond shall "employ such attorneys, satisfactory to the said J. D. Norwood, as may be needed to bring all necessary suits on matured principal and interest of said bonds." (R. 443). The record therefore shows that the suit in the name of W. L. Shumate was brought by Shannon Newman's attorney at her instance in the performance of and as a part of the joint venture activities. (R. 435).

Under these facts, it is clearly the law that all of the

joint adventures were necessary parties to a suit brought on interest coupons in pursuance of and in the carrying out of the joint adventure agreement, just as all partners are necessary parties to a suit brought in pursuance of partnership affairs. *In re McConnell*, 197 Fed. 438; *Crosby vs. Cotton*, 24 S. W. 343; *Bernitt, et al. vs. Smith-Powers Logging Co.*, 184 Fed. 139.

In the last cited case (184 Fed. 139), the Court said:

> "The case, therefore, is one where two out of three joint owners are suing a third party for a debt due the partnership or joint enterprise * * *. A defendant is entitled to have the entire claim prosecuted against him, or none, unless relinquished in part, and *one or more members of a copartnership, less than the whole, cannot proceed to recover their undivided interest in a debt against any debtor of the firm This is so elementary that it needs no authorities to sustain it. The demurrer must therefore be sustained.*"

The bringing of the suit was one of the agreed activities for which the joint adventure was formed and all of the parties to the joint adventure agreement were therefore necessary parties plaintiff. Being necessary plaintiffs, there was no complete diversity of citizenship which is necessary to confer jurisdiction on the Federal Court and the bringing of the suit in the name of W. L. Shumate, a nonresident of Texas, constituted a fraud on the jurisdiction of the Court without reference to what the intention of the parties in the matter might be.

The exact question was decided in *Broadis vs. Broadis*, 86 Fed. 951, in which the Court set aside a judgment procured against a resident of the State of California on the representation that she was an alien. In deciding the case, the Court said:

> "This court was therefore misled and imposed upon in that case, when it took jurisdiction on the ground of the alienage of the defendant Ellen Maria Broadis. It does not appear from the evidence that there was any actual collusion and fraud practiced upon the court. It seems that the complainant acted upon the advice of counsel in bringing his suit in this court, and in setting up the alienage of the defendant. But it is immaterial how the court was imposed upon, whether purposely or willfully, or through inadvertence and mistake. Suffice it is to say that it now affirmatively appears in this case that the court took jurisdiction of that case when it had no power to do so. The court, therefore, never had valid jurisdiction of the case, and its proceedings were and are wholly null and void * * *."

We also call the Court's attention to the cases of *Williams vs. Nottawa*, 104 U. S. 209; *Kreider vs. Cole*, 149 Fed. 647; *Town of Lantana vs. Hopper*, 102 Fed. (2d) 118, and *Phoenix Mutual Life Ins. Co. vs. England, et al.*, 22 Fed. Sup. 284.

We respectfully submit that since on the true facts the District Court had no jurisdiction in the Shumate case and since the plaintiff actually had no cause of action on the void interest coupons, that it is well within the equitable jurisdiction of the District Court to enjoin the enforcement of the judgment.

C.

Judgment Sued on by Petitioners Not Res Judicata of Right to Mandamus Prayed for by Petitioners.

The mandamus sought by Petitioners and denied by the lower courts was not merely a mandamus to levy and collect a tax and to apply the same upon the alleged judgment, but sought to vitalize the defunct Water District

which had never functioned or existed in fact and to turn it into an operating district for the sole purpose of collecting a fraudulent judgment based upon coupons clipped from void bonds for which no consideration whatsoever had been received by the District.

Petitioners prayed that the officers of the Water District be ordered by writ of mandamus:

> (a) "To forthwith appoint a qualified person to serve as tax assessor and collector 'for the District and' to appoint such deputies to assist such assessor and collector as shall be sufficient to do and perform the duties required," etc.
>
> (b) "To forthwith appoint three qualified persons as members of a board of equalization," etc.
>
> (c) "To forthwith employ a competent and qualified practicing attorney at law to do and perform all duties imposed by the laws of the State of Texas," etc.
>
> (d) " 'To forthwith select a depository' and to require an approved bond thereof."
>
> (e) " 'To forthwith deposit in said depository after the selection thereof' certain construction bonds."
>
> (f) "To instruct the tax assessor and collector * * * to promptly prepare assessments of real and personal property subject to taxation within said District, curing the respective years 1931, 1932, 1933, 1934, 1935, 1936 and 1937."
>
> (g) "To instruct said tax collector and assessor to promptly tender such assessments to the board of equalization," etc.
>
> (h) "To instruct said tax collector to receive back from the equalization board when it has performed its duties * * * such assessments and rolls, and proceed forthwith to compile delinquent tax records," etc.

(i) "To instruct said tax collector to prepare said compiled delinquent tax records and to extend thereon after each of such years the amount of taxes, interest, penalities," etc.

(j) "To cause said compiled delinquent tax records * * * to be submitted to the board of equalization for examination and apporval," etc.

(k) "To cause the tax assessor and collector of said district * * * to prepare in duplicate * * * tax rolls for said District for the years 1931-1937, inclusive," etc.

(l) " 'To require said tax assessor and collector to promptly make demand, in due form and manner' for the payment of all taxes and penalties."

(m) "To collect the taxes, current and delinquent," etc.

(n) " 'To pay out and turn over' to Respondents the money collected."

(o) "To cause said board of equalization, when appointed, to receive all assessment lists * * * and complete its regular duties with dispatch."

(p) "To cause said board of equalization to value each tract of land and parcel of real estate and other property," etc.

(q) " 'To cause said board of equalization * * * to promptly return' the tax rolls to the tax collector."

(r) "To cause the secretary of the board of directors of said district to serve as secretary of the board of equalization," etc.

(s) "To cause the secretary of said board of directors to fully perform and discharge with dispatch * * * all of the duties incumbent upon him."

(t) " 'To establish and maintain a legal office for conduct of the district's business and furnish such office and each officer of said District with all necessary equipment, plans, receipts and supplies

necessary to the performance of his duties * * * and that said board of directors be required to keep a true and full written account of all of their minutes and proceedings' and to preserve the same 'in a fireproof vault or safe'."

(u) " 'To order and command said board of directors to promptly determine, fix and enter of record, in due time, form and manner, a rate of ad valorem taxes for such construction bonds of said district' for the years 1931, 1932, 1933, 1934, 1935, 1936 and 1937."

(v) "To appropriate the proceeds of such taxes to the credit of the 'interest and sinking fund account' for said interim bonds," etc.

(w) "To pay all such funds collected and deposited in said 'interest and sinking fund account' to plaintiffs."

(x) "To continue the tax assessing, rate fixing, collecting and active management of said district," etc. (R. 29-35).

From the above, it is apparent that the mandamus here sought is not merely a mandamus for the enforcement of a judgment but, as stated above, is a mandamus to resurrect the District in order to attempt to impose upon it a groundless obligation.

We respectfully submit that the opinion of the Circuit Court of Appeals was correct in stating that the mandamus sought was not one "to perform the ministerial duties of levying taxes to pay a debt, but is one setting out and relying on the statute upon the authority of which it is claimed the bonds issued," and seeking to require "a person to do what the law prohibits him to do," that is, levy a tax on

property owners in a political subdivision to pay a debt which the District does not owe.

We also call attention to the fact that in the original case in which the alleged judgment was entered, plaintiff sought a mandamus for the collection of the judgment (R. 155) but no such relief was granted in the judgment (R. 37-38) and therefore by operation of law such relief was denied. It is difficult to see how the judgment could adjudicate the right to relief by mandamus which, though prayed for in the case, was not granted.

D.

Rule Announced in Brownsville vs. Logue 129 U. S. 493, Properly Followed and Applied.

Petitioners under their fourth point contend that the case of *Brownsville vs. Logue*, 129 U. S. 493, is inapplicable in the instant case because the bonds upon which the alleged judgment is based are not void under the decisions of the State of Texas.

The Trial Court and the Circuit Court of Appeals correctly followed and applied the decisions of the State Court in *State vs. Miller*, 133 Tex. 498, and *Miller vs. State*, 155 S. W. (2d) 1012 (error refused), which specifically held that the interim bonds and coupons upon which the instant judgment was based were void because not supported by a vote of the property owners of the District as required by the State Constitution. After stating the constitutional basis for its holding, the Texas Court said:

"For the reasons above indicated, we do not think the interim bonds as issued ever had any potential vitality, either in whole or in part, for any purpose whatsoever."

Petitioners in this case seek to have a tax levied to pay the interest on these void bonds.

As stated in the opinion in *Brownsville vs. Logue*, supra:

"The power invoked is not the power to tax to pay judgments, but the power to tax to pay bonds, considered as distinct and independent, and therefore, when the relator is obliged to go behind his judgments as money judgments merely, to obtain the remedy pertaining to the bonds, the Court cannot decline to take cognizance of the fact that the bonds are utterly void and that no such remedy exists." (129 U. S., at page 505).

* * * * * *

"Res judicata may render straight that which is crooked, and lack that which is white, facit ex curvo rectum, ex albo nigrum, (Jeter v. Hewitt, 22 How. 352, 364) but where application is made to collect judgments by process not contained in themselves and requiring, to be sustained, reference to the alleged cause of action upon which are founded, the aid of the Court should not be granted when upon the face of the record it appears, not that mere error supervened in the rendition of such judgments, but that they rest upon no cause of action whatever." (129 U. S. at page 505).

* * * * * *

"It appearing from the judgment records, or if not from relator's petition tha tthe bonds were issued under an abrogated statute and were consequently void, and that the respondents possessed no power to tax to pay them, because that power was given only by the statute which had ceased to exist."

In the instant case the power to tax was *denied* by the *Constitution of Texas, Article XVI, Section 59 (c),* requiring a vote of the property taxpaying voters authorizing the indebtedness. The officials of the District could be enjoined by a property owner from levying and collecting the tax which Petitioners sought to require the officials to levy and collect by their mandamus action.

CONCLUSION.

Petitioners apparently do not attack the ground for affirmance in the concurring opinion filed by Judge Sibley in which he states:

> "But the State of Texas, in the statute which authorized the issuance of the bonds, coupons from which were reduced to judgment, reserved the right to question the validity of bonds so issued, and was allowed to intervene for that purpose in this case. The State did pray for an injunction against enforcement of the judgment as a public debt. The State can so proceed, and did set aside a judgment about these very bonds in STATE vs. MILLER, 133 Tex. 498, 128 S. W. (2) 1012. The State was not a party to the present judgment and not bound by it. The plaintiff in judgment was no bona fide holder, but a party to a fraud by which the bonds were gotten from the district. The enforcement of the judgment ought, at the instance of the State, to have been enjoined, and the decree appealed from ought to be affirmed on this ground."

We respectfully submit that the District Court and the Circuit Court of Appeals correctly disposed of this case and that the writ of certiorari should be denied.

Respectfully submitted,

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